

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:30 P.M.  
Room WW55  
Monday, January 16, 2012

<b>Docket No.</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	<b>PENDING RULES: IDAHO FISH AND GAME COMMISSION</b>	
<a href="#"><u>13-0102-1101</u></a>	Rules Governing Public Safety	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0104-1101</u></a>	Rules Governing Licensing	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0104-1102</u></a>	Rules Governing Licensing	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0105-1101</u></a>	Rules Governing Fishing Contests	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0106-1101</u></a>	Rules Governing Classification and Protection of Wildlife	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0108-1101</u></a>	Rules Governing the Taking of Big Game Animals in the State of Idaho	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0109-1101</u></a>	Rules Governing the Taking of Game Birds in the State of Idaho	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0110-1101</u></a>	Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0111-1101</u></a>	Rules Governing Fish	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0112-1101</u></a>	Rules Governing Commercial Fishing	Sharon Kiefer, Deputy Director, IDFG
<a href="#"><u>13-0116-1101</u></a>	Rules Governing the Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals	Sharon Kiefer, Deputy Director, IDFG

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippets  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell  
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MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Monday, January 16, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER AND WELCOME:** **Chairman Pearce** called the meeting to order at 1:30 P.M. He welcomed back the committee members, as well as members of the audience, to the first committee meeting of this Legislative Session. Birthday greetings were given to **Senator Tippetts**, who in turn, invited the Committee to his office (after the meeting) for a piece of birthday cake.

**INTRODUCTION OF PAGE:** The **Chairman** then introduced the **Committee's Page, Ryan Chapman**, and asked him to share with the Committee his goals and why he wanted to be a Page.

**Ryan** stated that he attends Boise High School and his Government teacher encouraged him to apply for the position of Page. Ryan watched the progress of the restoration and remodeling of the Capitol Building and that also intrigued him to want to work here. After graduation, he plans to attend college at the University of Idaho, work in South America, return to college and study law. Besides school and his Page duties, Ryan works part-time at a pizza restaurant.

**ANNOUNCEMENT:** **Chairman Pearce** announced that the Idaho Environmental Forum has invited the Committee to the Owyhee Plaza Ballroom, Wednesday, January 18, at 1:15 P.M., to hear about the regulation of natural gas drilling in Southwest Idaho, and other issues of interest. Therefore, there will be **no meeting in this room Wednesday**.

**PASSING OF GAVEL:** The gavel was passed from the **Chairman** to **Vice Chairman Bair**, Chairman of the Rules Hearings.

**Vice Chairman Bair** stated that the Pending Rules for the Idaho Fish and Game Commission would be heard and welcomed **Ms. Sharon Kiefer, Deputy Director for the Idaho Department of Fish and Game (IDFG)**, who will present the rules, and **Mr. Dallas Burkhalter, Deputy Attorney General, Natural Resources Division/Fish and Game**, who will provide technical/legal explanations, if needed.

**DOCKET NO. 13-0102-1101** This rule governs public safety and it provides a mechanism for exemption from the live fire requirement of hunter education certification for persons with military and peace officer training.

**DOCKET NO. 13-0104-1101** This rule governs licensing. Legislation was passed last year (H 143) that allows nonresident disabled veterans to participate in a hunt in association with a qualified organization to receive reduced fees for certain licenses and tags; provides specific rules for bighorn sheep auction and lottery tags to accommodate proxy bidders, but prevents tag resale. It also set nonresident tag and outfitter set-aside quotas.

**DOCKET NO. 13-0104-1102** This rule also governs licensing and makes improvements to the Landowner Appreciation Program to provide for consistency in tag allocation, and to provide incentives for landowners in certain units who provide benefits for wildlife, wildlife habitat, or sportsmen.

<b>DOCKET NO. 13-0105-1101</b>	This rule governs fishing contests and it clarifies/simplifies the definition of "fishing contest".
<b>DOCKET NO. 13-0106-1101</b>	This rule governs the classification and protection of wildlife. It changes the classification name for Leatherside chub and Bluehead sucker to comply with recent research.
<b>DOCKET NO. 13-0108-1101</b>	This rule governs the taking of big game animals in the State of Idaho. It deletes references to a wolf trapping permit and clarifies the wolf trapping rules. It also allows wolf trapping near naturally deceased big game carcasses and clarifies and adjusts certain Big Game Management Unit descriptions.
<b>DOCKET NO. 13-0109-1101</b>	This rule governs the taking of game birds in the State of Idaho. It amends the Youth Waterfowl Day to correspond to the federal age qualification; and amends obsolete references to seasons, bag limits, and possession limits which are set by Commission Proclamation.
<b>DOCKET NO. 13-0110-1101</b>	This rule governs the importation, possession, release, sale, or salvage of wildlife. The wildlife salvage rules are amended to allow increased salvage of commercially valuable wildlife. (Accidental vehicle-collision caused mortality.)
<b>DOCKET NO. 13-0111-1101</b>	This rule governs fish and it amends and simplifies definitions of certain terms. It specifies the conditions by which hatchery steelhead and salmon legally harvested may be transported without tails and heads attached. It prohibits marking and releasing fish without a collecting permit and allows the use of a gaff hook when harvesting nongame fish taken with archery equipment. It also corrects obsolete rules.
<b>DOCKET NO. 13-0112-1101</b>	This rule governs commercial fishing. It removes the mountain sucker from the list of fish species that may be commercially harvested.
<b>DOCKET NO. 13-0116-1101</b>	This rule governs the trapping of predatory and unprotected wildlife and the taking of furbearing animals. The Commission is giving direction to work with trappers to determine if or how trapping closures near campgrounds and picnic areas could be adjusted; provides detailed specifications on trap break-away devices; specifies allowable jaw size for foothold traps in ground sets now that wolves have been delisted; and sets wolf trap equipment specifications.
	<b>Vice Chairman Bair</b> thanked <b>Ms. Kiefer</b> and <b>Mr. Burkhalter</b> for presenting the Pending Rules for the Fish and Game Commission. The Committee will vote on these rules Friday, January 20.
<b>PASSING OF GAVEL:</b>	<b>Vice Chairman Bair</b> returned the gavel to Chairman Pearce.
<b>ADJOURN:</b>	<b>Chairman Pearce</b> adjourned the meeting at 3 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:30 P.M.  
Room WW55  
Friday, January 20, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Approval of minutes - 1/16/12	Vice Chairman Bair
	Vote on Pending Rules of Fish & Game Commission	Vice Chairman Bair
	RULES HEARING:	
	<b>Temporary Rule - Department of Parks &amp; Recreation</b>	
Docket No. <a href="#">26-0136-1101</a>	Rules Governing the Winter Recreational Parking Permit Program	Director Nancy Merrill, IDPR
	<b>Fee Rule - Department of Lands</b>	
Docket No. <a href="#">20-0315-1102</a>	Rules Governing the Issuance of Geothermal Leases	Bob Brammer, IDL
	<b>Pending Rule - Department of Water Resources</b>	
Docket No. <a href="#">37-0302-1101</a>	Beneficial Use Examination Rules	Shelley Keen, IDWR
	<b>Pending Rules - Department of Environmental Quality</b>	
Docket No. <a href="#">58-0102-1101</a>	Water Quality Standards	Barry Burnell, DEQ
Docket No. <a href="#">58-0102-1102</a>	Water Quality Standards	Barry Burnell, DEQ
Docket No. <a href="#">58-0102-1103</a>	Water Quality Standards	Barry Burnell, DEQ
Docket No. <a href="#">58-0109-1101</a>	Rules Regulating Swine and Poultry Facilities	Barry Burnell, DEQ
Docket No. <a href="#">58-0110-1101</a>	Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as Amended	Orville Green, DEQ
Docket No. <a href="#">58-0124-1101</a>	Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release	Orville Green, DEQ

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce	Sen Heider
Vice Chairman Bair	Sen Tippets
Sen Cameron	Sen Werk
Sen Siddoway	Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Friday, January 20, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** The meeting was called to order at 1:30 by **Chairman Pearce**. He welcomed the large audience and said the first order of business would be to approve some minutes.

**APPROVAL OF MINUTES:** **Vice Chairman Bair** stated that he had read the minutes of January 16, 2012 and found them to be correct. He made the **motion** for their approval. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**PASSING OF GAVEL:** **Chairman Pearce** passed the gavel to **Vice Chairman Bair** who chairs the Rules Review.

**VOTE ON RULES:** **Vice Chairman Bair** said that voting on the 11 **Fish and Game's pending rules** that were heard on Monday, January 16, would commence. Each rule will be considered individually.

**DOCKET NO. 13-0102-1101** *Rules governing public safety.* **Senator Heider moved, seconded by Senator Tippetts**, that the Committee **adopt Rule No. 13-0102-1101**. The motion carried by voice vote.

**DOCKET NO. 13-0104-1101** *Rules governing licensing.* **Senator Tippetts moved, seconded by Senator Heider**, that the Committee **adopt Rule No. 13-0104-1101**. The motion carried by voice vote.

**DOCKET NO. 13-0104-1102** *Rules governing licensing.* **Ms. Sharon Kiefer, Deputy Director, Idaho Department of Fish and Game (IDFG)**, was asked numerous questions regarding this docket (which relates to the Landowner Appreciation Program/Landowner Incentive Program {LAP/LIP}) when she presented it on January 16. As a follow-up, she sent an email to all the Committee members on January 19 responding to the questions. (A hard copy of the email (attached) has been provided to the Committee members by the Secretary for today's meeting). Ms. Kiefer referred to the information in the email when responding to the Committee's inquiries. At the close of the discussion, the majority of the Committee did not believe higher or increased demands and restrictions should be placed on landowners in order to receive additional tags. They also did not like the new Landowner Incentive Tag program, preferring instead the old Rule.

**Senator Siddoway moved, seconded by Senator Cameron**, that the Committee **reject Rule No. 13-0104-1102, Rules Governing Licensing**. The motion carried by majority voice vote. Asking to be recorded as **voting no** were **Senators Tippetts, Heider, and Werk**.

- DOCKET NO. 13-0105-1101** *Rules governing fishing contests. Senator Heider moved, seconded by Senator Cameron, that the Committee adopt Rule No. 13-0105-1101. The motion carried by voice vote.*
- DOCKET NO. 13-0106-1101** *Rules governing classification and protection of wildlife. Senator Tippets moved, seconded by Senator Heider, that the Committee adopt Rule No. 13-0106-1101. The motion carried by voice vote.*
- DOCKET NO. 13-0108-1101** *Rules governing the taking of big game animals in the State of Idaho. Senator Siddoway moved, seconded by Chairman Pearce, that the Committee adopt Rule No. 13-0108-1101. The motion carried by voice vote.*
- DOCKET NO. 13-0109-1101** *Rules governing the taking of game birds in the State of Idaho. Senator Heider moved, seconded by Senator Siddoway, that the Committee adopt Rule No. 13-0109-1101. The motion carried by voice vote.*
- DOCKET NO. 13-0110-1101** *Rules governing the importation, possession, release, sale or salvage of wildlife. Senator Heider moved, seconded by Chairman Pearce, that the Committee adopt Rule No. 13-0110-1101. The motion carried by voice vote.*
- DOCKET NO. 13-0111-1101** *Rules governing fish. Senator Tippets moved, seconded by Senator Siddoway, that the Committee adopt Rule No. 13-0111-1101. The motion carried by voice vote.*
- DOCKET NO. 13-0112-1101** *Rules governing commercial fishing. Senator Heider moved, seconded by Senator Stennett, that the Committee adopt Rule No. 13-0112-1101. The motion carried by voice vote.*
- DOCKET NO. 13-0116-1101** *Rules governing the trapping of predatory and unprotected wildlife and the taking of furbearing animals. Senator Brackett moved, seconded by Senator Siddoway, that the Committee adopt Rule No. 13-0116-1101. The motion carried by voice vote.*
- Vice Chairman Bair** announced that the **temporary rule for the Idaho Department of Parks and Recreation** would be heard next and stated that **Director Nancy Merrill** will present it.
- DOCKET NO. 26-0136-1101** **Director Merrill** said the reasons for adopting this temporary rule is that the IDPR is in the process of expanding their on-line registration services. One change will allow customers to purchase winter recreation annual passes and temporary three-day permits via the IDPR web site. This rule change allows the temporary three-day permit to be placed on the vehicle dashboard or use the option of hanging the permit. Previously, the passes/permits had to be hung from the rear view mirror.
- Senator Tippets** noted that in the text of the docket, it appears there is confusing language and suggested that the word "hanging" be omitted in the last sentence of the text. (050. LOCATION OF PERMIT ON VEHICLE.)
- It was suggested by some members of the Committee that this **rule be withdrawn**, a new one written, and brought back next year. **Director Merrill** agreed to the suggestion.
- DOCKET NO. 20-0315-1102** Next on the agenda was **Mr. Bob Brammer, Assistant Director for Land, Minerals, and Range Division, Department of Lands (IDL)**, who explained this **pending fee rule** relating to **geothermal leasing**

**Mr. Brammer** said that the rule format is revised to conform with Section 67-52, Idaho Code and IDAPA 44.01.01. Definitions are changed for consistency and clarity. Most leases would be initially offered at auction instead of on a first-come basis. Lease term is extended up to 49 years in conformance with Section 47-1601 and 58-307, Idaho Code. Timely exploration and development of the lease is required or the lease may be cancelled. In addition, exploration and development requirements are reorganized for clarity. Geothermal rents and royalties would be determined through bidding or set by the board according to market rates in conformance with Section 47-1605, Idaho Code. The size of a lease is not restricted and will be determined by the Land Board in conformance with Section 47-1604, Idaho Code. Reinjection of surplus geothermal water is required to recharge the geothermal aquifer. The confidentiality of well logs is limited to one year in conformance with Section 42-4010(b), Idaho Code. Bond amounts are to be determined based on the costs of reclamation in conformance with Section 47-1608, Idaho Code. Application fees are increased to the amount needed to cover administrative costs.

**Mr. Brammer** stated in his testimony that the adoption of this rule will complete the effort initiated last year by the Department to remove or minimize obstacles to geothermal development on state lands. The leasing structure and process provided by these proposed changes to the rule are consistent with the structure used by the Department to successfully negotiate and issue two wind energy leases. As with wind energy projects, each geothermal project has a different land base and a different set of financial assumptions that vary with the type of use proposed. Rent and royalty will be known when the lease is issued so the lessee can project costs and obtain financing for these capital intensive projects. Exploration and development plans will be reviewed and approved by the Department to ensure that activities on endowment lands are done in a responsible manner.

A copy of Mr. Brammer's full testimony is attached. Other attachments include correspondence from **Christy Morris, Vice president, Land and Permitting, Ram Power Corporation** and **Douglas J. Glaspey, Chief Operations Officer, Geothermal Energy Association**. Both parties felt that improvements/changes should be made to this rule.

**TESTIMONY:** Testifying in opposition to the Rule was **Mr. Scott Nichols, US Geothermal**.

**TESTIMONY:** Also testifying in opposition to the Rule was **Ms. Lara Rozzell, Idaho Conservation League**.

**PASSING OF GAVEL:** There was more discussion from the Committee, and after the Rule gave Senator Siddoway heartburn, **Vice Chairman Bair** closed the discussion and returned the gavel to Chairman Pearce.

**ADJOURN:** The **Chairman** adjourned the meeting at 3:15 p.m.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary



AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:30 P.M.  
Room WW55  
Monday, January 23, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Confirmation hearing for Gubernatorial appointment of <b>Chris Korell</b> to the Outfitters and Guides Licensing Board	
	Confirmation hearing for Gubernatorial appointment of <b>Alex Irby</b> to the Outfitters and Guides Licensing Board	
<a href="#">RS20904</a>	Adopt a Concurrent Resolution approving an application for minimum lake level water right of Cocolalla Lake	Brian Patton, IDWR
<a href="#">RS20875</a>	Establish Governor's big game auction tags to raise revenue for IDFG programs	Vice Chairman Bair
<a href="#">RS20970</a>	Propose an amendment to the Constitution of the State of Idaho to preserve for the people the right to hunt, fish and trap	Senator Heider
	<b>Pending Rule - Department of Water Resources</b>	
Docket No. <a href="#">37-0302-1101</a>	Beneficial Use Examination Rules	Shelley Keen, IDWR
	<b>Pending Rules - Department of Environmental Quality</b>	
Docket No. <a href="#">58-0102-1101</a>	Water Quality Standards	Barry Burnell, DEQ
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MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Monday, January 23, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 p.m.

He welcomed **Mr. Jake Howard, Executive Director of the Outfitters and Guides Licensing Board**, and his staff, to the meeting. The **Chairman** then asked Mr. Howard to introduce the appointees to the Board.

**GUBERNATORIAL APPOINTEE:** **Mr. Howard** stated that the weather (and snow) has kept **Mr. Chris Korrell** from attending today's hearing and will come before the Committee at a later date. However, the other candidate, **Mr. Alex Irby**, is in attendance and will address the Committee. Mr. Howard said Mr. Irby has been reappointed by the Idaho Fish and Game Commission to the Outfitters and Guides Licensing Board for a term commencing May 31, 2011 and to expire May 31, 2014.

**SPEAKER:** **Mr. Irby** is from Orofino and has been a resource manager, sportsman and outdoor enthusiast from the Clearwater Region. Mr. Irby is a lifetime member of the Rocky Mountain Elk Foundation, National Rifle Association, Clearwater Basin Advisory Committee, past president of the Orofino Chamber and was a supervisor for the Clearwater Soil and Conservation District for 11 years. He also served two terms (1999-2007) on the Idaho Fish and Game Commission.

He felt that with his experience on the Idaho Fish and Game Commission, it will serve him well in the capacity of a Board member for the Outfitters and Guides Licensing Board. Mr. Irby stated that a great deal of the Board's time is spent on issues for the betterment of the public.

**Senator Werk** applauded Mr. Irby for the amount of time that he has spent in public service and also said that it is an honor to have Mr. Irby serve.

**Vice Chairman Bair** inquired as to what the main issues of concern are that are before the Board and asked how will they be solved? **Mr. Irby** replied that one of the concerns at the present time is the overlapping of allotments (bears, lions, and wolves), which started in the Clearwater Region. Some outfitters did not wish to hunt in some areas previously, but now it has become an issue. Another concern is outfitting on private land and the Board is working through that with the help of the Farm Bureau.

**Chairman Pearce** asked about what is being done about the predators. **Mr. Irby** replied that he thought the plan that is in place now is the answer to the problem. At one time, the Clearwater Region had the largest population of elk in the United States, but it is now down to a 50 percent reduction, which is at a bare minimum for the Clearwater Region. He feels it is really important to create a balance between the predators and the big game.

**Senator Siddoway** stated that he appreciated Mr. Irby's contribution to the Board, then inquired if the efforts to expand the industry (cross-country skiing, spending a day or two in a yurt in the backcountry, etc.) to create more revenue has been acted upon. **Mr. Irby** said there has been some interest, but not to the point that it has accelerated, probably due to the economy. **Senator Siddoway** then inquired about the finances of the Board. **Mr. Irby** replied that the finances are at rock bottom; however, they have retained their staff (with no increase in wages) and he praised Jake Howard and his employees for their diligence.

**Mr. Irby** said that last year they brought forth a RS for a fee increase, with the blessing of the outfitters, but it was rejected by this Committee. He indicated that they needed it then and still need it now and that they will be back with another request.

**Chairman Pearce** wondered how long it will take to rebuild the population of the elk in the Clearwater region. The response was that it is not only a predator problem, but also a vegetation problem. The Clearwater Basin Collaborative is working with the federal government to find money to restore this area. They have found that the summer range is lacking in good protein. **Mr. Irby** hopes that within 10 years they can show a dramatic improvement.

**Chairman Pearce** thanked Mr. Irby for talking to the Committee today and said that voting on his appointment would take place later.

The **Chairman** then introduced **Mr. Brian Patton**, with the **Department of Water Resources (IDWR)**, who will present RS 20904.

**RS 20904:** **Mr. Patton** said that the purpose of this RS would be to approve an appropriation of water by the Idaho Water Resource Board for the purpose of minimum lake levels in Cocolalla Lake.

**Mr. Patton** stated that Title 42, Chapter 15 of the Idaho Code lays out a process whereby the Water Resource Board may appropriate water for minimum streamflow, or minimum lake levels, purposes. The Board conducts its investigations, and based on the investigations, applies to the Department of Water Resources for a water right for these purposes. If the Department issues a water right permit for these purposes, it is submitted to the legislature for approval by concurrent resolution. This provides a check on the Board actions. However, if the legislature does not act on the concurrent resolution by the end of the legislative session, the minimum stream flow or minimum lake level water right shall be considered approved.

Cocolalla Lake is located along Highway 95 about 10 miles south of Sandpoint. It is about 800 acres in size, has public access and is heavily used for recreation purposes, including boating and fishing. In 2004, area landowners, through the Cocolalla Lake Association, petitioned the Water Board to establish a minimum lake level water right in the lake. The Board conducted its investigations and agreed that a minimum lake level water right is warranted and filed a water right application for this purpose. A formal hearing on this matter was heard in October of 2009 where representatives of the Cocolalla Lake Association spoke in support of this proposal and no one spoke in opposition. The Department issued an order approving this water right permit on January 15, 2010, which became final in January of 2011. It was then submitted for legislative review and approval to the current legislature.

**Mr. Patton** said the purposes for the Cocolalla Lake minimum lake level water right include the preservation of aesthetics, water quality, and recreational uses. This water right is junior in priority to all prior water rights from the lake, but would be senior in priority to any future water uses from the lake.

Questions from the Committee included one from **Senator Stennett** inquiring as to how the requirement for minimum levels are reached. **Mr. Patton** said that the term "minimum" in the statute refers to the minimum amount of water necessary for the purposes for which the water right is being established.

**Vice Chairman Bair** asked what would happen if the natural outlet of the lake changes? **Mr. Patton** stated that he doesn't think they have ever been faced with that situation and he does not have an answer to the question. **Vice Chairman Bair** then inquired if there were irrigators downstream and the reply was that there was a small number of irrigators downstream. **The Vice Chairman** asked if they would be adversely affected if this water right is granted for this minimum lake level and the reply from **Mr. Patton** was no.

**MOTION:** **Vice Chairman Bair** made the **motion** to send RS 20904 for printing. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**RS 20875:** **Vice Chairman Bair** said that a similar bill to this RS passed the House last year and when it was before this Committee, they saw some minor technicalities and problems with the bill. In his opinion, it has now been rectified. The bill is called the "Governor's Auction Tag" bill. It provides for the Commission to auction several tags every year to raise funds for the Department. The Commission may authorize up to three deer tags, up to three elk tags, up to three antelope tags, one moose tag, and may issue a goat and big horn sheep, depending on the population of those animals. Five percent of the proceeds may be kept by the non profit organizations who hold the auctions, 30 percent will go to sportsmen's access programs, and the balance of the money will be retained by the Department for use in wildlife habitat, wildlife management, research planning, and other programs.

**MOTION:** **Senator Tippetts** made the **motion** to send RS 20875 for printing. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

**RS 20970:** **Senator Heider** presented RS 20970. It proposes an amendment to the Constitution of the State of Idaho. He said that hunting, fishing and trapping are a valued part of the heritage of the State of Idaho and shall forever be preserved for the people. The exercise of this right by the people shall not be prohibited but shall be subject to the laws, rules and proclamations of the State. The rights set forth herein do not create a right to trespass on private property, shall not affect rights to divert, appropriate and use water, and shall not lead to a diminution of other private rights.

**MOTION:** **Senator Tippetts** inquired of the Chairman if this legislation would be returned to the Committee for further discussion. **Chairman Pearce** indicated that it would. **Senator Tippetts** then made the **motion** to send RS 20970 for printing. The motion was **seconded** by **Vice Chairman Bair**.

**Senator Cameron** said that he has concerns with the words "subject to" on lines 23-24. **Senator Heider** responded by saying that the rights can be superseded by the laws that apply to those rights. **Senator Cameron** said that perhaps it could have been worded differently, such as, "to give the right (or protection)" and "but nothing in this article shall prohibit the Department of Fish and Game, or the State, to be able to manage ..... He said it would not be subtracting from the rights of the citizens by some law that a future legislature might pass. **Senator Cameron** said that he would like to visit with Senator Heider regarding this RS. **Senator Heider** thanked Senator Cameron for his views.

**Chairman Pearce** said that a motion had been made, and seconded, and he called for the vote. The motion **passed** by unanimous voice vote.

**PASSING OF GAVEL:** **Chairman Pearce** passed the gavel to Vice Chairman Bair, Rules Chairman. **Vice Chairman Bair** then called on **Mr. Shelley Keen, Idaho Department of Water Resources**, to present IDWR's pending changes to "Beneficial Use Examination Rules."

**Docket  
No. 37-  
0302-1101:**

**Mr. Keen** said the Beneficial Use Examination Rules establish acceptable standards for conducting examinations and reporting beneficial use. Some of the rules contain ambiguous language that causes confusion about the information to be provided. The proposed rule changes would alter or clarify certain examination requirements to make it easier for the Certified Water Right Examiners (CWRE) to complete reports. Complete, accurate reports result in water right licenses being issued more quickly. The proposed changes are important at this time because IDWR has a water right licensing backlog of about 3,500 permits, and they anticipate more examinations being conducted by CWREs to help address the backlog.

The most significant among the proposed changes are: (1) Clarifying that examinations for some water rights may be conducted without an "on-site" inspection; (2) Clarifying when the examiner must report an annual diversion volume and clarifying how annual diversion volumes are to be determined; (3) Establishing that an aerial photograph must be submitted with all field reports; (4) Removing the water measurement exemption for diversion systems where IDWR did not require the permit holder to install a measuring device or access port; (5) Clarifying that IDWR employees are not CWREs, but they may be authorized by the Director to conduct beneficial use examinations; (6) Conforming the descriptions of large tracts of irrigated land to the provisions of Section 42-2190, Idaho Code; and (7) Establishing that irrigated acreage shall be reported to the tenth of an acre for parcels of land covering less than 10 acres.

**Vice Chairman Bair** thanked Mr. Keen for explaining this rule and said that voting would be in a few days. There was no one in the audience that indicated their desire to testify for or against the rule. He then called on **Mr. Barry Burnell, Water Quality Division Administrator for the Department of Environmental Quality, (DEQ)**, to present the Rules for that agency.

**DOCKET  
NO. 58-  
0102-1101:**

**Mr. Burnell** said that he had several rules to present and each rule is intended to reduce costs to the regulated community, provide more flexibility, implement legislative directives, and/or remove unnecessary requirements. They will all benefit the regulated community while still providing the same degree of environmental protection.

The first one is the Water Quality Standards - Thermal treatment requirements. This rule benefits the dischargers to the Boise River and Indian Creek and was requested by these municipalities. In order for dischargers to discharge effluent into surface water in Idaho, they are required to have a National Pollutant Discharge Elimination System (or NPDES) permit. In Idaho, those permits are not issued by the State, but instead are issued by EPA. In issuing those permits, EPA does use Idaho's Water Quality Standards to set various effluent limits. As NPDES permits are coming up for renewal, EPA has begun including thermal effluent limits in permits. In doing so, it has been determined that two parts of Idaho's Water Quality Standards relating to temperature are outdated, thus potentially causing unnecessary expenses to dischargers getting permit renewals. This rulemaking was undertaken to update our Water Quality Standards to avoid causing inordinate thermal treatment costs to permit holders such as the City of Boise. Without this rule change, thermal effluent limits in NPDES permits and costs to meet those limits will be greater than needed to protect aquatic life resources. The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**DOCKET  
NO. 58-  
0102-1102:**

This rulemaking was undertaken at the request of Idaho Power. DEQ proposes to revise its Water Quality Standards to include a site-specific temperature criterion for the Snake River from Hells Canyon Dam to the Salmon River. This change will make it easier for Idaho to meet our temperature water quality standards while still protecting the most sensitive beneficial use on this part of the Snake River, which is fall Chinook salmon spawning. This proposed rule, changes the temperature criteria for this stretch of the Snake River from 13°C to 14.5°C for the first 14 days of the fall Chinook salmon spawning period. It has been determined that this site-specific change will be protective of fall Chinook salmon spawning, while also conveying a benefit to other uses such as Idaho Power's Hell's Canyon Complex.

Studies have been conducted that demonstrate successful spawning at higher water temperatures than specified in the Water Quality Standards. In addition, the Snake River Fall Chinook Salmon population has demonstrated a significant recovery over the last 10 years. A site specific temperature standard was adopted by the Board in 2004 and approved by the legislature in 2005. This standard was based on the EPA Region 10 temperature guidance. Since that time, NOAA Fisheries and Idaho Power Company have conducted studies. David Geist has conducted controlled declining temperature research and published the data in 2006 specific to fall Chinook salmon.

There was a controversial issue regarding raising the water quality temperature criterion from 13°C to 14.5°C for 14 days in the Snake River below Hells Canyon Dam to the confluence of the Salmon River. Supporting the proposal is NOAA-NMFS, USFWS, and Idaho Power. Opposing the Rule change are the Tribes and Idaho Rivers United. EPA does not make pre-decisional comments on this rule, but does make specific comments that need to be addressed in DEQ's rule submittal. The DEQ reply to comments addresses these specific comments.

**DOCKET  
NO. 58-  
0102-1103:**

This rulemaking implements the legislative direction provided in H 153 in correcting the antidegradation portion of the water quality standards. DEQ consulted with the Attorney General's Office to incorporate into the rule the language passed by the 2011 Legislature. All of the legislative changes were incorporated.

The Legislature rejected portions of the Water Quality Standard and approved the majority of the rule. The 2011 Legislature passed H 153 to replace the rejected sections. The sections that were rejected are the following: Definition of Degradation or Lower Water Quality; Treatment of General Permits; Identification of Tier II Waters; and Insignificant Activity or Discharge. House bill 153 also put into statute that Special Resource Waters shall be evaluated in the same fashion as all other waters.

Due to time constraints, the remaining Rules on the agenda will be heard at a future meeting.

**PASSING  
OF  
GAVEL:**

**Vice Chairman Bair** returned the gavel to Chairman Pearce.

**ADJOURN:** **Chairman Pearce** adjourned the meeting at 3:00 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary



AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Wednesday, January 25, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	Committee consideration of the Gubernatorial appointment of Alex Irby to the Outfitters and Guides Licensing Board	
	Vote on Rules heard Monday, 1/23/12	Vice Chairman Bair
	<b><u>Carry-over of PENDING RULES - DEQ</u></b>	
Docket No. <a href="#">58-0109-1101</a>	Rules Regulating Swine and Poultry Facilities	Barry Burnell, DEQ
Docket No. <a href="#">58-0110-1101</a>	Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as Amended	Orville Green, DEQ
Docket No. <a href="#">58-0124-1101</a>	Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites	Orville Green, DEQ
	<b>PENDING RULE - DEPARTMENT OF LANDS</b>	
Docket No. <a href="#">20-0702-1102</a>	Rules Governing Oil and Gas Conservation in the State of Idaho	Eric Wilson, IDL

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce	Sen Heider
Vice Chairman Bair	Sen Tippetts
Sen Cameron	Sen Werk
Sen Siddoway	Sen Stennett
Sen Brackett	

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, January 25, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 P.M.

The first order of business was the Committee consideration of the appointment of Alex Irby to the Outfitters and Guides Licensing Board.

**MOTION:** **Senator Siddoway** made the **motion** to accept the appointment of Alex Irby to the Outfitters and Guides Licensing Board. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote. **Senator Nuxoll** will be the **sponsor**.

**PASSING OF GAVEL:** **Chairman Pearce** passed the gavel to **Vice Chairman Bair**, Rules Chairman.

**VOTE ON RULES:** **Vice Chairman Bair** said there are four Rules to consider and vote on, prior to hearing more Rules.

**DOCKET NO. 37-0302-1101** *Beneficial Use Examination Rules.* **Senator Tippetts moved, seconded by Senator Brackett**, that the Committee **adopt Rule No. 37-0302-1101**. The motion carried by voice vote.

**DOCKET NO. 58-0102-1101** *Water Quality Standards.* **Senator Siddoway moved, seconded by Senator Tippetts**, that the Committee **adopt Rule No. 58-0102-1101**. The motion carried by voice vote.

**DOCKET NO. 58-0102-1102** *Water Quality Standards.* **Senator Brackett moved, seconded by Senator Heider**, that the Committee **adopt Rule No. 58-0102-1102**. The motion carried by voice vote.

**DOCKET NO. 58-0102-1103** *Water Quality Standards.* **Senator Heider moved, seconded by Senator Siddoway**, that the Committee **adopt Rule No. 58-0102-1103**. The motion carried by voice vote.

The Vice Chairman indicated that the voting is over and will now proceed to hear more Rules. He then called on **Mr. Barry Burnell, Water Quality Division Administer for DEQ**.

**DOCKET NO. 58-0109-1101** *Rules Regulating Swine and Poultry Facilities.* **Mr. Burnell** said that the purpose of this rule is to implement H 206, passed in 2011, wherein the Idaho Legislature placed the responsibility and oversight of current and future poultry operations with the Idaho State Department of Agriculture. The proposed rule will remove references to poultry facilities from DEQ's "Rules Regulating Swine and Poultry Facilities." He stated that there was no controversy or comments regarding this issue.

**DOCKET NO.  
58-0110-1101**

*Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended*). It was presented by **Mr. Orville Green, Administrator of Waste Management for DEQ**. The purpose is to implement H 93, passed in 2011, wherein the Idaho Legislature revised the definition of "restricted hazardous waste". It also updates the federal regulations, incorporated by reference, to include those revised as of January 1, 2011. House bill 93 addresses the new definition of "by-product material" enacted as part of the Federal Energy Policy Act of 2005 and to clarify that certain materials now included in this new definition could continue to be disposed of at a commercial hazardous waste disposal facility located in Idaho. This change in definition at the federal level would prohibit disposal of this material at a commercial hazardous waste disposal facility under the existing definitions of "restricted hazardous waste." The amendment specifically clarifies that a facility could continue taking this waste, consistent with the Federal Energy Policy Act of 2005, which states that commercial hazardous waste facilities are authorized to continue accepting such waste.

**Mr. Green** said that no public hearing was requested or held on this Rule and no written comments were received from the public. There are no increased costs to the Department.

**DOCKET NO.  
58-0124-1101**

*Standards and Procedures For Application of Risk Based Corrective Action at Petroleum Release Sites*. **Mr. Green** presented this Rule also. It requires that DEQ develop a guidance document to aid in implementation of the rule. During work group meetings for guidance development, the work group identified that the current state of the science regarding the methodologies describing how the toxicity data is used to calculate risk, particularly for inhalation exposures, had changed. The work group also concluded that the procedures and screening levels for risk evaluation of the vapor intrusion pathway, as delineated in the existing rule, did not meet current industry practice by omitting the use of soil vapor measurements. This rulemaking has been initiated to update portions of the rule that are pertinent to evaluation of petroleum release sites in order to promote consistent corrective action decision-making at those sites.

**Vice Chairman Bair** said that **Mr. Eric Wilson, Minerals Resource Manager, Idaho Department of Lands**, would present the Oil and Gas Rule.

**DOCKET NO.  
20-0702-1102**

*Conservation of Crude Oil and Natural Gas in the State of Idaho*. **Mr. Wilson** stated that the Department is the administrative agency for the Idaho Oil and Gas Conservation Commission. The Commission's duty under Idaho Code 47-3 is to prevent waste during the exploration and development of oil and gas resources, protect the correlative rights of mineral owners, and protect fresh waters during oil and gas development on all federal, state, and private lands in Idaho.

On May 17, 2011, the Oil and Gas Conservation Commission directed the Department to enter into rulemaking to revise IDAPA 20.07.02. These rules govern the drilling, completing, and plugging of oil and gas wells. The rules have not been revised since 1989. Since that time, the technology used by the oil and gas industry has continued to advance, and expectations for ground water protection and regulatory oversight have increased.

The initial reason to open this rulemaking process was to address well treatments and hydraulic fracturing. A temporary rule to cover these activities was approved by the Commission in April, 2011, but a more thorough rule was needed. In addition, the Department identified several other gaps in the existing rules that needed to be addressed in order to better implement the Oil and Gas Conservation Act.

Mr. Wilson provided a summary of the proposed changes and they include the following: Expanded well drilling permit requirements; addition of a public comment period on applications; application, operating, and reporting requirements for well treatments, including hydraulic fracturing; increased bond amounts and additional bonding requirements; basic surface owner protections; modified well drilling rules to better prevent waste and protect fresh waters; new pit construction requirements; definitions of active and inactive wells and incentives for proper well abandonment; periodic testing of well integrity to prevent waste and protect fresh waters; basic emergency response requirements; removal of Class II injection well permitting under this rule; improved plugging to better protect fresh waters; new surface reclamation standards; and revised geophysical permitting requirements.

With no oil and gas activity in Idaho, our regulations have not kept pace with the industry, noted Mr. Wilson. He said the issue that precipitated this rulemaking, hydraulic fracturing, is a good example of how regulations need to keep pace with advances in industry. While this practice has been around since the 1950's, the scale and amount of hydraulic fracturing used in specific types of oil and gas development has greatly expanded in the last few years. As some problems with these large well treatments have become apparent, many states have been revising their rules to address these problems.

In closing, Mr. Wilson said that these proposed changes will provide a consistent regulatory framework for oil and gas development and will further the mission of the Oil and Gas Conservation Commission. In particular, the proposed changes provide significantly better protection for Idaho's fresh water resources. (A copy of Mr. Wilson's full testimony is on file.)

**PASSING OF  
GAVEL:**

**Vice Chairman Bair** announced that due to time constraints, the hearing on this Rule would be continued. He then passed the gavel to the Chairman.

**ADJOURN:**

**Chairman Pearce** adjourned the meeting at 3 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

**AMENDED #1 AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Friday, January 27, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	Approval of Minutes 1/20/12	Senator Heider
<a href="#"><u>RS20941</u></a>	Applicants for state grazing leases to submit a grazing management proposal as part of their application	Senator Brackett
<a href="#"><u>RS21053C1</u></a>	Propose an amendment to the Constitution of the State of Idaho that the right to hunt, fish, and trap shall be preserved for the people	Senator Heider
	Confirmation hearing of the Gubernatorial appointment of Robert "Bob" Graham to the Idaho Water Resource Board	Robert "Bob" Graham
	Confirmation hearing of the Gubernatorial appointment of Peter D. Van Der Meulen to the Idaho Water Resource Board	Peter D. Van Der Meulen
	Confirmation hearing of the Gubernatorial appointment of Jeffery D. Raybould to the Idaho Water Resource Board	Jeffery D. Raybould
	Confirmation hearing of the Gubernatorial appointment of Kenneth T. Anderson to the Idaho Fish and Game Commission	Kenneth T. Anderson
	Confirmation hearing of the Gubernatorial appointment of Fred Trevey to the Idaho Fish and Game Commission	Fred Trevey
	"Question and Answer Time" with the IDFG Commissioners: Tony McDermott, Fred Trevey, Bob Barowsky, Wayne Wright, Randall Budge, Kenny Anderson, and Gary Power	

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce	Sen Heider
Vice Chairman Bair	Sen Tippetts
Sen Cameron	Sen Werk
Sen Siddoway	Sen Stennett
Sen Brackett	

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Friday, January 27, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Heider, Tippetts, Werk, and Stennett

**ABSENT/EXCUSED:** Senators Siddoway and Brackett

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce called the meeting to order at 1:30 P.M.** He announced that Sharon Kiefer, Idaho Department of Fish and Game, has provided the members of the Committee with the latest "Wolf Management Update" and it is in the blue folder on your desk.

**MOTION:** Making the **motion** for the approval of the minutes for January 20th was **Senator Heider**. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

**Chairman Pearce** then called on **Vice Chairman Bair** to present **Senator Brackett's** RS in his absence.

**RS 20941:** **Vice Chairman Bair** said this proposed legislation will require applicants for state grazing leases to submit a grazing management proposal as part of the application. It allows the Department to conduct a preliminary analysis of whether or not an applicant's proposed use is consistent with the Department's resource objectives and management expectations for the lands applied for. The grazing proposal submitted by the successful applicant then becomes the grazing management plan for that lease.

**MOTION:** **Senator Tippetts** made the **motion** to send RS 20941 to print. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

**RS 21053C1:** **Senator Heider** presented his RS. He said the purpose of this legislation is to propose an amendment to Article I of the Constitution of the State of Idaho, by adding a new Section 23, Article I, that the right to hunt, fish and trap shall be preserved for the people.

**MOTION:** **Vice Chairman Bair** made the **motion** to send RS 21053C1 to print. The motion was **seconded** by **Senator Tippetts**. The motion **passed** by unanimous voice vote.

**INTRO-DUCTIONS:** **Mr. Brian Patton, Administrator, Planning and Technical Services Division, Department of Water Resources**, introduced the following **Gubernatorial appointees** to the **Idaho Water Resources Board**: **Robert "Bob" Graham, Peter D. Van Der Meuden, and Jeffery D. Raybould**.

**SPEAKER:** Speaking first to the Committee was **Mr. Graham** who is from Bonners Ferry and is being reappointed. His term commenced January 1, 2011 and will expire January 1, 2015.

According to his biography, his family moved to Bonners Ferry in 1972 where he was the District Ranger for the U.S. Forest Service for the Bonners Ferry Ranger District.

He graduated from Washington State University with a bachelor degree in Forestry in 1958, after a two year break in the Army. Mr. Graham then went to work with the Forest Service and spent all but two years stationed in various assignments in Idaho. They lived in Priest Lake, Sandpoint, Orofino, Pierce, North Fork of the Clearwater, on the Salmon River at Slate Creek, and Bonners Ferry. Almost his entire career was in Administration and Fire Control, including a stint as a smokejumper. He retired under the Fire Control and Law Enforcement program.

Mr. Graham has been a County Commissioner for Boundary County and was Chairman of that Board. He also served as Secretary/Treasurer of the North Water and Sewer District Board and is currently serving as a representative of the Idaho Homeland Security Bureau, as well as the Incident Commander for emergencies for Boundary County. Mr. Graham was appointed the contact for the County for Homeland Security Federal Grant programs.

At the present time, he does forest consulting work for Northern Idaho forest owners and is the resource advisor to county officials.

He and his wife have six children - all of them born and educated in Idaho.

**Senator Stennett** inquired of Mr. Graham as to what he thought would be the most difficult thing he will face while serving on the Board. Mr. Graham responded by saying that getting up to speed on the water problems of Northern Idaho, which are different from those of Southern Idaho.

After being interviewed by the Committee, **Senator Keough (District 1)** spoke on behalf of Mr. Graham. According to the Senator, some of Mr. Graham's attributes are: a good listener; has a calm demeanor; and has a good understanding of the issues.

**SPEAKER: Mr. Peter Van Der Meulen**, residing in Hailey, spoke next.

He received a B.S. in Engineering from Stanford University and is now a retired Licensed Professional Engineer, after having employment with Idaho Power, MK, and Alpha Engineers. Mr. Van Der Meulen served in the United States Marine Corp from 1961 to 1966, and was honorably discharged.

From 1976 to 1999, he was founder, president and CEO of Power Engineers, Inc. The company currently has 1,350 employees and 32 offices worldwide. Presently, he is a cattleman and farmer, with a cow-calf operation, as well as growing hay and grain.

Board affiliations include: The Idaho Company; Sun Valley Ski Education Foundation; The Community School; Laidlaw Park Grazing Association; First Bank of Idaho, (Founding); Croy Canyon Ranch Foundation; Blaine County Soil Conservation District; and Water District 37 and 37 M. Presently, Mr. Van Der Meulen serves on the Board of Trustees for Blaine Manor and Webb Landscaping, Inc.

**Senator Cameron** asked Mr. Van Der Meulen to share his opinion about recharge - when it should be done, how it should be done, and how it will be paid for. **Mr. Van Der Meulen** stated that recharge is the biggest issue that they face, and "where" is the most delicate of the issues. He said that he understands that a group at the University of Idaho will make that determination. Mr. Van Der Meulen said that his wish is to do the best for the aquifer, with the best science that is available to them. The cost issue on recharge is that some seed money will be provided for five years for a pilot project and he feels that is the right direction to go.

After being interviewed by the Committee, **Senator Stennett (District 25)** spoke on behalf of Mr. Van Der Meulen and thanked him for his years of public service. His term for the Water Resource Board commenced April 28, 2011 and will expire January 1, 2015.

**SPEAKER:**

The following biography was submitted for **Mr. Jeff Raybould**, whose term for the Water Resource Board commenced April 28, 2011 and will expire January 1, 2015.

Jeff has played an active role in the agricultural industry for over 30 years, both as a farm owner and as an industry representative. In 1977, Jeff joined Raybould Brothers Farm, located in Madison and Fremont Counties, which consists of 2,800 acres and produces yearly crops of potatoes, small grains, and hay.

Jeff serves as a member on the Board of Directors of Egin Bench Canals and a member of the Board of Directors of Fremont-Madison Irrigation District, serving as Chairman of the Fremont-Madison Board since 1996. Jeff is a member of the cofacilitation team for the Henry's Fork Watershed Council and is a member of the ESPA Comprehensive Aquifer Management Planning and Implementation Committees.

As of March, 2010, Jeff serves as an alternate on the Committee of Nine, the advisory committee to Water District 01. In April, 2011, Jeff was appointed to the Idaho Water Resource Board by Governor Otter.

Beyond his commitment to protecting and managing Idaho's water resources, Jeff's service also includes supporting the potato industry in various leadership roles at the state and national level, including the National Potato Council (NPC), the Idaho Food Quality Assurance Lab Advisory Committee, and the Idaho Potato Commission. In 2003, Governor Dirk Kempthorne awarded Jeff a Certificate of Highest Merit for distinguished service to the potato industry and a Commendation for Distinguished Public Service.

**Senator Cameron** spoke on behalf of Jeff and also commended his father, Representative Dell Raybould.

**Vice Chairman Bair** inquired about deep wells and also asked Mr. Raybould how he could best facilitate recharge in the state. **Mr. Raybould** responded by saying that some farmland in the Rexburg area owned by them is irrigated by deep wells and other land is irrigated by surface water. With regard to recharge, the Board authorized a plan for a five year pilot recharge program in the state (as Mr. Van Der Meulen indicated) and staff was instructed to put together the framework for how the program will move forward. **Vice Chairman Bair** asked where the \$300,000 annual cost would come from (as indicated in the Resolution). **Mr. Raybould** said the funds would come from a secondary aquifer management account and it is an approximate amount. Recharge may only take place two or three years out of the five years, due to the snow pack.



**Chairman Pearce** thanked the three gentlemen for appearing before the Committee and said voting would be held next Monday on their appointments.

**INTRO-  
DUCTIONS:**

The **Chairman** then welcomed and introduced the **Gubernatorial appointees** to the **Idaho Fish and Game Commission, Kenneth Anderson and Fred Trevey**. He asked Mr. Anderson to speak first.

**SPEAKER:**

**Mr. Anderson's** appointment to the Idaho Fish and Game Commission commenced July 5, 2011 and will expire June 30, 2015.

According to his resume, he has always lived in Eastern Idaho and loves the outdoors and mountainous terrain that their area has to offer. He is an avid snowmobiler, dirt biker, horseman and hunter. His hunting and fishing has extended to Canada and Alaska harvesting moose, caribou, dall sheep, grizzly bear and salmon. Mr. Anderson also fishes for steelhead with his father-in-law on the Oregon coastal rivers. He is a member of the National Rifle Association and graduate and lifetime member of Front Sight Defensive Training in Prhum, Nevada.

Professionally, Mr. Anderson is the founder, president, and owner of Anderson Cabinet and Millwork, Inc., with an average of 35 to 45 employees. His company manufactures cabinets, mouldings and countertops. Commercial jobs include LDS churches nationwide; large multi-unit complexes; state and local schools; hospitals; clinics; courthouses; municipal projects; and other professional buildings. His licenses include Architectural Woodwork Institute (AWI) Premium Certification; Leed certified; Forest Stewardship Council (FSC); Idaho Public Works; and Bid and Performance Bonds up to \$1,000,000 per job.

**Senator Tippetts** asked Mr. Anderson what the biggest challenge facing the Commission is. **Mr. Anderson** said that there are many concerns that the Idaho Fish and Game Commission will have to deal with over the next few years. The second wolf season has been implemented in the state and how they are dealt with is critical. Game population is down and hunter participation in buying tags for elk and deer are down by about \$12,000. He stated that the motorized vehicle rule is very debatable, due to where one can and can't go. Auctioning off of tags is a big issue also. Mr. Anderson said it is a difficult time, as well as a great time, to serve on the Commission.

The **Chairman** thanked Mr. Anderson, then called on **Mr. Fred Trevey** whose reappointment is from June 30, 2011 to June 30, 2015..

**SPEAKER:**

**Mr. Trevey** was first appointed to the Idaho Fish and Game Commission for the Clearwater Region August, 2007. He has also been a board member of the Cougar Ridge Water and Sewer District. His education includes a Bachelor of Science in Forestry and Wildlife Management and has 40+ years professional experience in natural resource and wildlife management. Mr. Trevey is also a life-long hunter and fisherman.

**Mr. Trevey** stated that the past four and one-half years has been almost nonstop dealing with the wolf issue. He said they called on the expertise of Wildlife Services and the U.S. Department of Agriculture and did wolf control through depredation processes. They were able to do some hunting and trapping. Being able to bring logic and direct control has been quite a challenge during the past four years stated Mr. Trevey.

**Chairman Pearce** said that he sees the grizzly bear as a great issue, perhaps larger than the wolves. He asked what can be done, what needs to be done, anything that hasn't been done as a Legislature? **Mr. Trevey** said that they have led efforts in the Clearwater Region to discourage bears as they are a nonessential population and the problem is on the horizon.

**DISCUSSION:** **Chairman Pearce** invited the Idaho Fish and Game Commissioners to a "round table discussion" with the Committee members. In attendance, in addition to the two appointees, were Tony McDermott, Bob Barowsky, Wayne Wright, and Gary Power

**Chairman Pearce** thanked the Commissioners for the short discussion (due to time constraints). He announced that the winter feeding program will be presented on February 3rd.

**ADJOURN:** He then adjourned the meeting at 3 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

**AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Monday, January 30, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	Committee consideration of the Gubernatorial appointment of Robert "Bob" Graham to the Idaho Water Resource Board	Robert "Bob" Graham
	Committee consideration of the Gubernatorial appointment of Peter D. Van Der Meulen to the Idaho Water Resource Board	Peter D. Van Der Meulen
	Committee consideration of the Gubernatorial appointment of Jeffery D. Raybould to the Idaho Water Resource Board	Jeffery D. Raybould
	Committee consideration of the Gubernatorial appointment of Kenneth T. Anderson to the Idaho Fish and Game Commission	Kenneth T. Anderson
	Committee consideration of the Gubernatorial appointment of Fred Trevey to the Idaho Fish and Game Commission	Fred Trevey
	Vote on 3 DEQ Rules heard on 1/25/12	Vice Chairman Bair
	Confirmation hearing for Gubernatorial appointment of Robert Hansen to the Department of Parks and Recreation	Robert Hansen
	Confirmation hearing for Gubernatorial appointment of Charles Correll to the Department of Parks and Recreation	Charles Correll
	Presentation: "2012 Idaho Parks Passport"	Director Merrill, IDPR

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce	Sen Heider
Vice Chairman Bair	Sen Tippetts
Sen Cameron	Sen Werk
Sen Siddoway	Sen Stennett
Sen Brackett	

COMMITTEE SECRETARY

Juanita Budell  
Room: WW37  
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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, January 30, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:40 P.M. He announced that Ms. Kiefer, from the Idaho Department of Fish and Game, has provided information that was requested concerning the Landowner Appreciation Program (Deer, Elk, and Pronghorn) and also the LAP History and Current Status, which are in the Committee's blue folders.

He then announced that the Committee would consider the Gubernatorial appointments that were heard Friday, January 27.

**MOTION:** **Senator Siddoway moved** to send the Gubernatorial appointment of **Robert "Bob" Graham to the Idaho Water Resource Board** to the floor with the recommendation that it be confirmed by the Senate. **Vice Chairman Bair seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Keough** will be the **floor sponsor**.

**MOTION:** **Senator Stennett moved** to send the Gubernatorial appointment of **Peter D. Van Der Meulen to the Idaho Water Resource Board** to the floor with the recommendation that it be confirmed by the Senate. **Senator Cameron seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Stennett** will be the **floor sponsor**.

**MOTION:** **Senator Siddoway moved** to send the Gubernatorial appointment of **Jeffery D. Raybould to the Idaho Water Resource Board** to the floor with the recommendation that it be confirmed by the Senate. **Vice Chairman Bair seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Siddoway** will be the **floor sponsor**.

**MOTION:** **Vice Chairman Bair moved** to send the Gubernatorial appointment of **Kenneth T. Anderson to the Idaho Water Resource Board** to the floor with the recommendation that it be confirmed by the Senate. **Senator Siddoway seconded** the motion. The motion **passed** by unanimous voice vote. **Vice Chairman Bair** will be the **floor sponsor**.

**MOTION:** **Senator Tippetts moved** to send the Gubernatorial appointment of **Fred Trevey to the Idaho Water Resource Board** to the floor with the recommendation that it be confirmed by the Senate. **Senator Heider seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Johnson** will be the **floor sponsor**.

**PASSING OF GAVEL:** **Chairman Pearce** passed the gavel to **Vice Chairman Bair**, who will conduct the voting on three Department of Environmental Quality (DEQ) Rules that were heard on January 25.

**DOCKET NO. 58-0109-1101** *Rules Regulating Swine and Poultry Facilities.* **Senator Tippetts moved, seconded by Senator Heider**, that the Committee **adopt Rule No. 58-0109-1101**. The motion **carried** by unanimous voice vote.

**DOCKET NO. 58-0110-1101** *Rules Regulating The Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended.* **Senator Heider moved, seconded by Senator Siddoway**, that the Committee **adopt Rule No. 58-0110-1101**. The motion **carried** by unanimous voice vote.

**DOCKET NO. 58-0124-1101** *Rules Regulating Swine and Poultry Facilities.* **Senator Siddoway moved, seconded by Senator Heider**, that the Committee **adopt Rule No. 58-0124-1101**. The motion **carried** by unanimous voice vote.

**PASSING OF GAVEL:** **Vice Chairman Bair** returned the gavel to Chairman Pearce.

**Chairman Pearce** said the next order of business would be to hear from the two Gubernatorial appointees to the **Department of Parks and Recreation, Robert Hansen and Charles Correll**.

**SPEAKER:** **Mr. Robert Hansen**, from Menan, Idaho, was appointed to the Parks and Recreation Board to serve a term commencing July 12, 2011 and expiring June 30, 2017.

Mr. Hansen received his BS degree in Finance at Weber State in Ogden, Utah and his MBA at Utah State University. He served six years in the Army and Air Force Reserves and also served a two year Mission for the LDS Church.

He taught at Ricks College in the Business Department for 11 years and also taught night classes (10 years) for the University of Idaho MBA students during the same time period.

Mr. Hansen started a business, Big Sky Financial Resources, which he has now owned since 1978. It is a financial planning business and he has licenses in real estate, insurance and brokerage.

Following are some of his civic activities: Past president of Eastern Idaho Estate Planning Council; Past president of East Idaho Chapter of CLU and CHFC; Chartered Life Underwriter; Chartered financial consultant; Past member of Board of Directors for Red Steer Corporation; Boy Scout merit badge counselor for over 20 years; and County Commissioner (2005-2011). Some of his assignments were: District 6 representative for the IAC legislative committee; Regional Develop Alliance; Madison Memorial Hospital Board; Madison Economic Partners Board; and a number of state committees, as well as normal duties as a Commissioner.

Mr. Hansen is also a member of the American Quarter Horse Association (since 1966) and a member of the National Cutting Horse Association (since 1986). He rides his horses on BLM land, the mountains of Eastern Idaho and Western Wyoming. He has also packed horses in these mountains, as well as in Yellowstone.

When asked what his goals and/or recommendations are for the Department he replied that there is always the issue of balance for the public good of funding some things with tax dollars and other things with a users fee. Because the parks are a service to the public, it has to be balanced, but one has to find ways to collect revenue from the sources of those that are using it. He feels that is the challenge, as some ways are easy and some are not. The resource cannot be used up, but must be kept up, so that it can be used for future generations, and that is the fragile balance. Mr. Hansen added that he feels there are a great number of people who do not understand what Idaho has and it is an education process for the younger generation to get a grasp of the resources so that they can be the participant in keeping them up, instead of using them up.

**Senator Siddoway** said that he has great respect for Mr. Hansen and the job that he has done.

**Senator Heider** inquired about the Boy Scout merit badge counseling. **Mr. Hansen** said it was in horsemanship and money management.

**Chairman Pearce** thanked Mr. Hansen, then called on Mr. Charles Correll.

**SPEAKER:** **Mr. Correll** was appointed to the Parks and Recreation Board on January 16, 2012 and his term will expire on June 30, 2013.

He received his B.S. in Business from the University of Idaho and has had a public accounting office in Jerome for 38 years. Mr. Correll is also a registered investment advisor. His military service was for the U.S. Army and he received an honorable discharge.

Current memberships and offices held include the Jerome Chamber of Commerce and the Jerome School District Foundation of which he is the secretary/treasurer.

Previous offices and Boards that he served on consist of the following: Mayor, City of Jerome, eight years; Jerome City Council, eight years; Comprehensive Aquifer Management Committee, Alternate member; Family Health Services, Director and Vice President; Region IV Development, Director and Vice President; Jerome Urban Renewal Agency, Director and Chairman; Idaho Association of Public Accountants, Director and President; Jerome Recreation District, Clerk; Jerome School District, Clerk; Jerome Chamber of Commerce, Director and President; St. Benedict's Hospital Foundation, Treasurer; Jerome Hospital Association, President; and the Jerome Rotary Club, Treasurer. Mr. Correll is active in various capacities in his church and also in Respite Foster Care.

**Senator Tippetts** stated that Mr. Correll has a rich history of service in various capacities and thanked him for it.

**Senator Cameron** said that he and Representative Maxine Bell had recommended Mr. Correll to the Governor. He noted that the city of Jerome had less problems when Mr. Correll was the mayor and added that he has a fine working style.

**Chairman Pearce** thanked Mr. Correll for his willingness to serve. He then called on **Director Nancy Merrill** who provided information regarding the parks and then explained the "2012 Idaho Parks Passport."

**SPEAKER:** The Mission of the Idaho Department of Parks and Recreation is "To improve the quality of life in Idaho through outdoor recreation and resource stewardship." The Board of Directors include Tom Crimmins, Region I; Randy Doman, Region II; Ernest Lombard, Region III; Charles Correll, Region IV; and Jean McDevitt, Chairman, Region V.

Statistics show there are 30 state parks and 60,263 managed acres. Last year, 5.2 million park visitors were served, with 1.65 million out-of-state day users. Overnight camping increased by 1.07 percent. IDPR registers 300,000 boats, ATVs, motorbikes and snowmobiles annually. There were 60 ATV/motorbike safety classes in 2011, reaching 882 students. There were also 12 avalanche awareness classes that reached 900 students.

**Director Merrill** reported on the "Successes" of 2011. They were – all 30 parks remained open; volunteers contributed over 86,000 hours; customer satisfaction increased from 89% to 94%; overnight camping increased by 1.07%; revenues were up by 8.3%; visitation was up by 8%; the 30 marketing plans were finished; and better communication was established with state and community leaders.

The Director explained their strategy to improve the Department. It includes reinventing IDPR to incorporate Best Business Management Practices; expand fundraising efforts; develop marketing and promotion capabilities; new operating and staffing models (different mix of skill sets); redirect capital improvement to public health and safety/revenue generation; and to secure dedicated funding to replace lost general funds. One of the ways in moving towards long-term sustainable solutions is establishing the Idaho State Parks Passport. When vehicle registration is due, one can purchase annual access to the state parks for \$10.

Currently, the annual pass is \$40 and the day pass is \$5, per vehicle. IDPR's current program brings in \$800,000 annually. According to the Idaho Transportation Department, it has 1,251,800 registered motor vehicle owners. A conservative estimate of vehicle owners who will choose to purchase an Idaho State Parks Passport is 20%. That would equal 250,300 vehicles. That number times \$10 would amount to \$2.5 million, less the present \$800,000 from the current program, the projected increase in revenue would be \$1.7 million.

Director Merrill said that the end result will be that Idahoans will have a choice when they register their cars to purchase access to all 30 of the state parks for a tremendous discount. And it is a movement towards a long-term, sustainable funding source to assist in keeping Idaho's state parks open and accessible. Legislation is being proposed.

**ADJOURN:**

**Chairman Pearce** thanked Director Merrill for her presentation. He then adjourned the meeting at 2:20 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

**AMENDED #1 AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Wednesday, February 01, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS21045</a>	This legislation allows landowners to sell their landowner appreciation tag	Senator Siddoway
<a href="#">RS21019</a>	This legislation would provide sportsmen access to private land in exchange for the ability of landowners to sell special landowner tags.  Committee consideration of the Gubernatorial appointment of Robert Hansen to the Department of Parks and Recreation  Committee consideration of the Gubernatorial appointment of Charles Correll to the Department of Parks and Recreation  Committee consideration of the Fish and Game Commission appointment of Alex Irby to the Outfitters and Guides Licensing Board	Senator Brackett
Docket No. <a href="#">20-0315-1102</a>	<b>Carry-over of Fee Rule - Department of Lands</b> Rules Governing the Issuance of Geothermal Leases	Bob Brammer, IDL
Docket No. <a href="#">20-0702-1102</a>	<b>Carry-over of Pending Rule - Department of Lands</b> Rules Governing Oil and Gas Conservation in the State of Idaho	Eric Wilson, IDL

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

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Phone: (208) 332-1323  
email: [jbudell@senate.idaho.gov](mailto:jbudell@senate.idaho.gov)



MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, February 01, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 P.M. He announced that the print hearing for the two RS's on the agenda will be postponed until all Committee members are in attendance. Committee consideration will be given for the appointees to Boards/Commissions.

**MOTION:** **Senator Siddoway moved** to send the Gubernatorial appointment of **Robert Hansen to the Department of Parks and Recreation** to the floor with the recommendation that it be confirmed by the Senate. **Vice Chairman Bair seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Siddoway** will be the **floor sponsor**.

**MOTION:** **Senator Cameron moved** to send the Gubernatorial appointment of **Charles Correll to the Department of Parks and Recreation** to the floor with the recommendation that it be confirmed by the Senate. **Senator Siddoway seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Cameron** will be the **floor sponsor**.

**MOTION:** **Senator Tippetts moved** to send the Idaho Fish and Game Commission's appointment of **Alex Irby to the Outfitters and Guides Licensing Board** to the floor with the recommendation that it be confirmed by the Senate. **Senator Heider seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Nuxoll** will be the **floor sponsor**.

**CORRECTION:** **Chairman Pearce** stated that previously the announcement of Mr. Irby's appointment was made by the Governor, which was in error. The appointment was made by the Fish and Game Commission. This notice is to retract the previous announcement and to correct the error.

**RS 21045:** **Senator Siddoway** explained that this legislation would allow that any landowner issued a landowner appreciation program controlled hunt tag may sell the tag to another person. He declared a conflict of interest.

**MOTION:** **Vice Chairman Bair** made the **motion** to send RS 21045 to print. **Senator Tippetts seconded** the motion. The motion **passed** by unanimous voice vote.

**RS 21019:** **Senator Brackett** stated that his RS is similar to Senator Siddoway's RS and that he has no objection to the RS sponsored by Senator Siddoway; however, he feels that his RS goes further to help the sportsmen, as it would provide reasonable access to hunting. He, too, declared a conflict of interest.

**MOTION:** **Senator Cameron** made the **motion** to send RS 21019 to print. **Senator Heider seconded** the motion. The motion **passed** by unanimous voice vote.

**PASSING OF GAVEL:** The **Chairman** passed the gavel to **Vice Chairman Bair** who will preside over the hearing of two rules.

**DOCKET NO. 20-0315-1102:** *Rules Governing the Issuance of Geothermal Leases.* **Vice Chairman Bair** said this Rule had been previously reviewed, but there were concerns from both Industry and the Idaho Conservation League. Since that hearing, Representative Stevenson, the Vice Chairman, representatives from ICL, Industry, and the Idaho Department of Lands held a meeting and developed a "fix" to improve the Rule.

**TESTIMONY:** **Vice Chairman Bair** called on **Mr. Scott Nichols, representing US Geothermal**, who had attended the above referred-to meeting. Mr. Nichols said after meeting with Mr. Brammer from IDL and the meeting in the House, he wished to offer an "olive branch" and move forward. He stated that with Mr. Brammer's commitment to address some critical issues in the Rules, he recommends approval of the Rules.

**TESTIMONY:** **Ms. Lara Rozzell**, who works with the **Idaho Conservation League on Public Land Energy Issues** testified next. She stated that they had some concerns, but after the meeting Friday morning, they are satisfied that there is a clear path forward in working with the Department and this is the best option.

**TESTIMONY:** **Mr. Bob Brammer, Assistant Director of the Lands, Minerals, and Range Division for the Idaho Department of Lands (IDL)** stated that he understands the concerns regarding this Rule and that he would take responsibility for not giving the Rule as much attention as they should have. The Department is trying to be adaptable and in the rulemaking process, they will go back and look at the sections where there are concerns. Mr. Brammer said that he is making a commitment to the Committee that they will reopen rulemaking to resolve unresolved issues. He reminded the Committee that these are leasing rules for all state lands, but predominately endowment lands. Under the Constitutional mandate, the Department is trying to get the best deal that is out there and of course, Industry is trying to get the best deal they can, so there is a tension. However, if Industry is not out there, the Department does not get development or revenue. Mr. Brammer stated that they need to be reasonable in their approach.

**Senator Cameron** asked to be informed of the progression of the Rules throughout the year. He encouraged the Department to listen to the concerns of the people involved and added that it felt uncomfortable to approve rules, by everyone's admission, that are not workable. The Senator said that he would encourage the Department to do a better job up front.

**MOTION:** **Senator Tippets** made the **motion** (reluctantly) to approve Docket No. 20-0315-1102. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**Vice Chairman Bair** thanked the Committee for their patience and forbearance as they worked through that issue.

**DOCKET NO. 20-0702-1102:** *Rules Governing Oil and Gas Conservation in the State of Idaho.* He announced that this Rule has been carried-over from last week to allow for more testimony to be heard.

**TESTIMONY:** First to testify was **Gayle Poorman** from Cambridge. She is concerned that the proposed regulations on the gas drilling industry do not go far enough to protect their drinking water. A copy of her complete testimony is on file.

**TESTIMONY:** **Mr. Lee Halper** also testified in opposition to this Rule.

**TESTIMONY:** **Ms. Alma Hassee**, Fruitland, asked that the rulemaking process be opened back up for public comment and public hearings. Her closing statement of her testimony was "Until sound, peer-reviewed science can conclusively show that fracking poses no danger to public health, animal health, and the very environment that we all require to exist, we should use the Precautionary Principle and refrain from these activities., At this time, there is a great deal of evidence that fracking is not safe. We can live without a natural gas glut, we cannot live without clean water to drink and produce our food." A copy of her testimony is on file.

**TESTIMONY:** **Ms. Tina Fisher**, who lives in Payette County near the New Plymouth impact zone testified that she is very concerned about contamination of their water, as well as other issues. A copy of her testimony is on file.

**TESTIMONY:** **Ms. Mary Sue Roach**, Weiser, was unable to attend, but submitted written testimony. She wrote ..... "I am very much aware that Idaho is in need of an economic boost but I hope it is not at the expense of our resources and our way of life." A copy of her testimony is on file.

**TESTIMONY:** **Mr. Justin Hayes, Idaho Conservation League**, testified next. He said their greatest concern was regarding "fracking". The rule, as written, will allow cancer causing chemicals in the fracking solution.

Mr. Hayes was asked if the ICL had ever supported the rule and the answer was no. He did say that parts of the rule are good and they do a pretty good job of deciding how to drill a well.

**Vice Chairman Bair** said time was up and the need to vacate the room for the next committee meeting. He indicated that this discussion would continue on Monday.

**PASSING OF GAVEL:** The **Vice Chairman** then returned the gavel to **Chairman Pearce**.

**ADJOURN:** **Chairman Pearce** adjourned the meeting at 3:02 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

**AMENDED #1 AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW02 (Auditorium)**  
**Friday, February 03, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS21114</a>	Authorize cities to establish or extend a city irrigation system	Norm Semanko, IWUA
<a href="#">RS21115C1</a>	Relating to flood protection	Norm Semanko, IWUA
<a href="#">RS21120</a>	Relating to irrigation districts	Norm Semanko, IWUA
<a href="#">RS21121</a>	Relating to drainage districts	Norm Semanko, IWUA
	<u>Presentation:</u> Winter Feeding of Elk, Deer and Antelope	IDFG Staff

Followed by: Question and Answer Time;  
Public testimony will be heard

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Friday, February 03, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW02 (Auditorium)

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Tippetts, and Stennett

**ABSENT/ EXCUSED:** Senators Heider and Werk

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 P.M. He explained that prior to hearing the presentation on the "Winter Feeding of Elk, Deer and Antelope", there is some Committee business to take care of.

**MOTION:** **Senator Brackett** made the **motion** to approve the minutes of January 23. The motion was **seconded** by **Senator Stennett**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Tippetts** made the **motion** to approve the minutes of January 25. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

The following RS's were submitted by **Norman Semanko, Idaho Water Users Association**.

**RS 21114:** This legislation would authorize cities to establish or extend a city irrigation system.

**RS 21115C1:** This legislation relates to flood protection.

**RS 21120:** This legislation relates to irrigation districts.

**RS 21121:** This legislation relates to drainage districts.

**Mr. Semanko** provided the Committee with a two page letter explaining the problems and the reasoning to correct those problems. His closing paragraph of the letter states: "This is regulatory overreach, pure and simple, based upon a strained and unprecedented interpretation of the requirements of the National Flood Insurance Program by the State Floodplain Administrator at IDWR and the City of Meridian. Unfortunately, the consequences will be Statewide if not addressed. The impacts will be felt by nearly all local governments and all irrigation delivery entities in the State." A copy of his letter is on file.

**MOTION:** **Vice Chairman Bair** made the **motion** to **print RS 21114, RS 21115C1, RS 21120, and RS 21121**. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**INTRO- DUTIONS:** **Chairman Pearce** welcomed **Mr. Virgil Moore, Director, Idaho Department of Fish and Game (IDFG)**, who, in turn, introduced some of his **staff**. In attendance were **Butch Olson, Randy Moser, Jeff Gould, Sharon Kiefer, and Jim Unsworth**. He said that **Jeff Gould, Chief of Wildlife**, would present the program on **"Idaho's Emergency Winter Feeding Program."**

**SPEAKER:** Mr. Gould presented a PowerPoint program which included the **Statutes, Policy, and Program, as well as pictures of various scenes** of the Winter Feeding Program.

The **Statutes** are as follows:

**36-111** (Fish & Game Set-Aside Account - 1984);

\$1.50 from each deer, elk, and pronghorn tag;

\$.75 dedicated to winter feeding & winter range rehabilitation (only if balance exceeds \$400,000).

**36-123** (Winter Feeding Advisory Committees - 1993/94);

Five member committee in Regions 3-7;

Appointed by Commission (2 year terms);

Provide advice and recommendations;

Liaison between Commission, Department, interest groups, and public;

Developed regional criteria to define "emergency".

**022-207A** (Private Feeding of Big Game Animals - Rules for Disease Control 2003/2004);

Division of Animal Industries (ISDA) authorized to promulgate rules for the regulation and prohibition of the private feeding of big game animals;

IDFG cooperate with ISDA regarding spacial separation of big game and livestock in areas requiring disease control methods;

Restrictions do not apply to emergency feeding activities conducted by IDFG.

The **Policy** is as follows:

**FW-10.00** (Big Game Feeding Policy - 1996)

**"Policy** recognizes that the big game population should be maintained under natural conditions and by naturally available forage."

"The Department will work with the appropriate land management agencies in an effort to maintain winter ranges in a condition suitable to meet big game management objectives..."

"Big game numbers must be controlled through adequate harvest."

"...do not sanction any wide-spread supplemental winter feeding."

Concentrating animals (wild & domestic) increases disease transmission.

"....**Commission** recognizes that the big game population should be maintained under natural conditions and by naturally available forage."

"The Department will work with the appropriate land management agencies in an effort to maintain winter ranges in a condition suitable to meet big game management objectives...."

"Big game numbers must be controlled through adequate harvest."

"...do not sanction any wide-spread supplemental winter feeding."

Concentrating animals (wild & domestic) increases disease transmission.

**Policy:** "The Department is authorized to feed big game only if..."

To prevent property damage or for public safety when other methods have failed;

To prevent excessive mortality in drainages that would affect the recovery of the herd. Some mortality should be expected.

**Program:**

**Southwest Region Criteria**

Snow >18 inches for 5 or more days, or maximum daily temperature <0 degrees (F);  
No feeding prior to January 15 (to prevent short-stopping);  
Also consider snow crusting and animal condition.

**Southeast Region Criteria**

Snow >18 inches;  
Animal condition - fall carcass weights of fawns (>52 pounds males, >46 pounds females); Yearling xiphoid fat depth (>5-6 mm);  
Maximum daily temperature 0 degrees F for  $\geq$  10 days;  
Deer present on winter ranges;  
Local citizen input;  
Local range conditions (drought, fire, etc.).

**Program:**

Average number of deer fed                      1984-2012 = 1,650/year  
Average number of elk fed                      1984-2012 = 1,318/year  
Average number of pronghorn fed   1984-2006 = 72/year

**Winter Range Rehabilitation:**

Shrub cutting and juniper abatement projects;  
Seed for fire rehabilitation;  
Bitterbrush seedlings;  
Noxious weed control;  
Winter range fertilization;  
Volunteer contribution substantial and increasing.

Mr. Gould reviewed the budget and expenditures for the Committee. Regarding the budget, Chairman Pearce previously asked Ray Houston, Legislative Budget Analyst, if "the Winter Feeding Set-aside can be used for other purposes?" Mr. Houston responded with a memo and the financial analysis for the Winter Feeding Program and also the Depredation Prevention & Habitat Improvement Program. (Copies are attached.)

Some of the colored slides that were shown during the presentation included: Naturally available forage; BLM Juniper Abatement; Blair Fire "Portfolio of Tools"; Deer in the South East, 2010; Deer in the South East 2011 - Drive In Fire; Fertilization; Hand Planting; Tractor Planting; and a winter scene of Elk.

**TESTIMONY:**

**Mr. George Dovel**, editor and publisher of "The Outdoorsman", who lives north of Horseshoe Bend was the first to testify. He did not have any good things to say about IDFG and their winter feeding program. A copy of his testimony is on file. He did offer a solution to the problem which is to "apportion the dedicated fund to the Board of County Commissioners of each of the handful of counties where feeding has taken place in a ratio based on past spending. The county would be required to follow an 'amended IDAPA Rule' to the extent of the funding that is available. If an emergency occurs during the first couple of years, it is doubtful there would be sufficient funds available and it would require soliciting donations, as has occurred in the past, or limiting the response to what can be done with the funding that is available."

**TESTIMONY:**

**Mr. Neill Goodfellow**, from Fruitland, said that he was **representing himself** as a hunter, which he has done since 1974. The game was plentiful then, but since the 90's, there has been a downturn. Improving habitat is important, but it seems to him that what is missing is managing the wolf and the Department seems to be more interested in doing other things. Mr. Goodfellow also noted that revenue is down because the sale of out-of-state tags is down.

- TESTIMONY:** **Mr. Josh Davis**, from Donnelly, said that he is **representing himself** also. He has a ranch at Donnelly and they have been feeding elk about 15 years. The herd started at about 30 head, but currently they feed around 130-150 head. He stated that IDFG provided them with elk fence for their haystacks, but they spend around \$2,000 to \$4,000 for hay each winter that they feed the elk. Mr. Davis stated that the elk are healthy and there are few "die-offs" each winter. He related his favorite story which was about a tiny calf without a mother. It would come right up to the pickup and get fed. She had funny shaped ears, so it was easy to recognize her. For nine years, she came around and had seven calves over the years. He said the point of his talk is that private feeding works.
- TESTIMONY:** **Mr. Dale Thornock** testified that he is **representing himself and also the Bear Lake Chapter for Idaho Wildlife**. He said that he was a city councilman for ten years and was interested in hearing about the budget. During 1998 to 2005, they fed around 550 head of deer in three canyons and the sportsmen want the deer to survive and they need the capability to feed the deer and elk.
- TESTIMONY:** Next to testify was **Mr. Jim Kemery**, Challis, **representing himself**, said that his grandfather was a county extension agent and was in charge of a program to relocate elk from out-of-state to Idaho in the 1930's. Great expense and care was invested in getting the elk in the best condition possible and getting them established. He stated that the issue facing the State is to preserve these animals and to use the funds for anything else, other than for feeding or reimbursing ranchers, should be eliminated.
- TESTIMONY:** **Ms. Billijo Beck**, from Salmon, **represented herself**. She related the events that she witnessed during the winter of 2010-2011 of elk starving to death. She talked to Gary Power, Idaho Fish and Game Commissioner, who told her the closest feeding station was at Stanley. An article was published May 1, 2011 telling of the record number of animals perishing because of unusual heavy snows and the low temperatures during the winter. Ms. Beck said the issue is not growing more elk, but saving the ones we have left.
- TESTIMONY:** **Mr. Kelton Larsen** is the president of Idaho Wildlife, but is just **representing himself** today. He said that he agrees with George that the IDFG does not feed correctly and that it almost takes an act of Congress to get them to feed anything. Mr. Larsen stated that in southeast Idaho, the deer have a lot of problems. If there is a feeding fund, he asked why not turn it over to the counties? He closed his testimony by saying that something different needs to be done.
- TESTIMONY:** Written testimony was submitted by **Ms. Michelle Fosheim** who lives in Sundance, Wyoming. She lamented the fact that "there are almost no deer or elk left in Idaho. Wolves are taking over at an alarming rate. If you don't initiate a more stringent method of eliminating this predator, then feeding the ungulates will just be ringing the dinner bell. The wolves in Jackson Hole came. They came when the ungulates were being fed. They killed. They sport killed and it was a very sad, horrible thing to see. Is that the wish of the Idaho Fish and Game? Do you want to finish off what is left of the ungulate herds? Why do you seem to care so little for the poor ungulates and so much for the wolf?" A copy of her testimony is on file.
- ADJOURN:** **Chairman Pearce** thanked everyone for staying late on a Friday afternoon, then adjourned the meeting at 3:35 P.M.



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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:30 P.M.  
Room WW55  
Monday, February 06, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Confirmation hearing for Gubernatorial appointment of Jim Yost to the Northwest Power & Conservation Council	Jim Yost
<a href="#">RS21031</a>	Relating to Rangeland Center at UI	Senator Brackett
Docket No. <a href="#">20-0702-1102</a>	Carry-over of Pending Rule - Department of Lands Rules Governing Oil and Gas Conservation in the State of Idaho	Eric Wilson, IDL
<a href="#">S 1256</a>	F&G, big horn sheep tags, auction	Vice Chairman Bair
<a href="#">SJR 104</a>	Right to hunt	Senator Heider

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell  
Room: WW37  
Phone: (208) 332-1323  
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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, February 06, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** Senator Siddoway

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 P.M.

He welcomed **Mr. Jim Yost**, who has been reappointed to the **Northwest Power & Conservation Council**, to serve a term commencing January 15, 2012 and expiring January 15, 2015.

**SPEAKER:** **Mr. Yost** said that he appreciated the Governor reappointing him to this position and to come before this Committee. He stated that he wanted to explain a little about the Northwest Power & Conservation Council. It was created in 1980 by a federal act and provided for a coalition of the four northwest states - Oregon, Washington, Idaho, and Montana. It is not a federal agency, nor a state agency. There are two members from each state, appointed by their respective Governors, and they serve three year terms.

The Council was given three specific mission goals and they are: to provide an adequate, economical, and reliable power supply; to mitigate and enhance fish and wildlife; and to give public participation and consultation of distribution of information for all of the interest in the region. They prepare a 20 year power plan, with a five year action plan, and a fish and wildlife 20 year plan, also with a five year action plan. All of the funding for the Council and the state activities come from the Bonneville Power Administration (BPA).

Mr. Yost was born in Rupert and raised in the Magic Valley of Southern Idaho where he learned and applied knowledge of water, agriculture, and natural resources. He graduated from the College of Southern Idaho in 1968 with an Associate of Arts degree and then Boise State in 1971 with a Bachelor of Arts degree in education. In 1972, he was elected to the Idaho State Senate at the age of 24, the youngest Idaho Senator/Legislator ever elected. He served two terms.

Some of his employment included owning and operating a dairy distributorship, working for the Union Pacific Railroad, Assistant Public Affairs Director for the Idaho Farm Bureau, then promoted to Public Affairs Director. He served under four Governors as a Natural Resources Senior Policy Advisor before being named to NWPPC.

**Chairman Pearce** thanked Mr. Yost for appearing before the Committee and said voting would take place at a later date.

**RS 21031:** **Senator Brackett** presented this RS. It would create, in statute, the Rangeland Center at the University of Idaho for the purpose of creating a new model for interdisciplinary research, education, and outreach to fulfill the University's land grant mission. The modern challenges of rangeland management require integrative thinking and innovative practices to maintain and restore these lands and the human communities that rely on them. The Center shall be comprised of researchers and educators from the College of Natural Resources; the College of Agricultural and Life Sciences; the University of Idaho Cooperative Extension; other colleges or units in the University of Idaho; and other agencies or academic institutions that may contribute.

They should have an interest or expertise in grazing, rangeland ecology, entomology, soil science, economics, rural sociology, fish and wildlife management, invasive plant management, forage production, animal science, fire ecology, restoration and the use of spatial technologies to understand and manage rangelands.

**MOTION:** **Vice Chairman Bair** made the **motion** to print RS 21031. The motion was **seconded** by **Senator Cameron**. The motion **passed** by unanimous voice vote.

**PASSING OF GAVEL:** **Chairman Pearce** passed the gavel to **Vice Chairman Bair** who will conduct the hearing of a Rule that has been carried over from a previous meeting.

**DOCKET NO. 20-0702-1102:** *Rules Governing Oil and Gas Conservation in the State of Idaho.* To refresh the Committee regarding this Rule, on January 25, **Mr. Eric Wilson, Minerals Resource Manager for the Idaho Department of Lands (IDL)**, told them the Department is the administrative agency for the Idaho Oil and Gas Conservation Commission (IOGCC). The Commission's duty under Idaho Code 47-3 is to prevent waste during the exploration and development of oil and gas resources, protect the correlative rights of mineral owners, and protect fresh waters during oil and gas development on all federal, state, and private lands in Idaho. In May, 2011, IOGCC directed IDL to enter into rulemaking to revise IDAPA 20.07.02. These rules govern the drilling, completing, and plugging of oil and gas wells. The rules had not been revised since 1989 and since that time, the technology used by the oil and gas industry has continued to advance and expectations for ground water protection and regulatory oversight have increased.

The initial reason to open this rulemaking process was to address well treatments and hydraulic fracturing. A temporary rule to cover these activities was approved by the Commission in April, 2011, but a more thorough rule was needed. The Department identified several other gaps in the existing rules that needed to be addressed in order to better implement the Oil and Gas Conservation Act.

**TESTIMONY:** First to address this Rule was **Mr. David Hawk, owner of Energy Analysis and Answers**. He stated that he favors these Rules after attending time-consuming meetings. He feels the State will have thorough, meaningful, and tough Rules that will protect all concerned. He stated that he is in favor of thorough, detailed Rules that cover the processes of exploration for and developing hydro carbon resources and he indicated that these Rules stand for that.

**TESTIMONY:** **Mr. Reed Mulkay** was next to testify. His concern is regarding his family, several of whom are senior citizens. One of the lessons he has learned throughout his life is that nothing goes perfectly. He questioned what would happen if a mistake occurred and asked for equal protection.

**TESTIMONY:** Vice Chairman Bair called on **Ms. Amanda Buchanan** next. She stated that she lives in Washington County and was one of the few citizens who attended the rulemaking sessions this past summer. Ms. Buchanan attended seven out of the ten sessions and the largest group attending was the industry. She felt that the State would have benefited from the presence of a non industry expert on Oil and Gas Best Practices on regulations.

Ms. Buchanan said that people in Payette and Washington Counties have justifiable concerns. They see what has gone wrong in other states and imagine those scenarios happening in their own communities. She made several suggestions to help alleviate their fears. One is to have some trailer legislation regarding fracking; surface owners should be compensated for lost property values; the Legislature needs to properly fund IDL that would mandate inspections; replace all the "may" language in the Rule with "shall"; require that all petitions, test results, and pertinent information be posted on the State's website in a timely manner and be easily accessible to the public; and to provide a way to financially assist in water well testing for private citizens within one mile of the gas/oil well.

**TESTIMONY:** **Ms. Claudia Lee Haynes**, representing **Canyon County Alliance**, asked that this Rule be sent back to the rulemaking process and asked for a date certain for it to be done and returned to this Committee in a timely manner. She commented that state after state has said "if we would have just written better rules to protect the water and health of our people; should have asked for mandatory baseline testing of the ground water and surface water before drilling started; asked for tracers so that it can be traced back to the source of the contamination; asked for bonding that would have protected the people better; and required the industry to use non-carcinogens in the fracking fluids." A copy of her testimony is on file.

**TESTIMONY:** **Mr. Eric Wilson, IDL**, said there are a few things that need to be corrected for the record. There have been several statements made that aren't quite correct between the last hearing and today's testimony. The Department will require full disclosure of all materials that are being used. (That is part of the application.) That information may not be available to the public, as it is a matter of trade secret provisions. As far as the wells, Industry has told them there are some things they need to do down in the well hole (reservoir) that require these materials to be used. Mr. Wilson said that as long as IDL addresses proper well construction and how the fluids are managed on the surface, that takes care of 99.9% of those horror stories that are in the newspapers. IDL does not have the authority to ban the use of any substances in a well treatment or hydraulic fracturing. Idaho Code, 47-319 (b) indicates there are three priorities for the Oil and Gas Conservation Commission. They are to prevent the waste of oil and gas; to protect correlative rights; and to administer and enforce this act. He stressed that there is nothing they can do (in this rule) to ban carcinogenic materials, as it would be in conflict with the statute.

**TESTIMONY:** Written testimony was provided by **Justin Hayes, Idaho Conservation League**. He indicated in his letter that when he testified last week, he referenced the report (Chemicals Used In Hydraulic Fracturing) that he is providing to the Committee today, to aid in the deliberations on the Oil and Gas Rules. A copy is on file.

**MOTION:** After much discussion, **Chairman Pearce** made the **motion** to accept Docket No. 20-0702-1102. The motion was **seconded** by **Senator Tippets**.

**Senator Werk** feels there is a lot of work to be done, both in statute and rulemaking. He hopes there will be proper oversight and proper protection for human health and safety.

**Vice Chairman Bair** called for a vote. The motion **passed** unanimously by voice vote.

**PASSING OF  
GAVEL:**

**Vice Chairman Bair** returned the gavel to **Chairman Pearce**.

**ANNOUNCE-  
MENTS:**

The **Chairman** said the two bills left on the agenda will possibly be heard on Wednesday.

**ADJOURN:**

He then adjourned the meeting at 3 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Wednesday, February 08, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">SJR 104</a>	Right to hunt	Senator Heider
<a href="#">S 1283</a>	Controlled hunt tag/sale of	Senator Siddoway
<a href="#">S 1256</a>	F&G, bighorn sheep tags, auction (To be held indefinitely; will be heard at a later date.)	Senator Bair

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, February 08, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/  
EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 P.M. and asked for motions for the minutes of January 27 and 30.

**MOTION:** **Senator Heider** made the **motion** for approval of the minutes of January 27. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

**MOTION:** **Senator Tippetts** made the **motion** for approval of the minutes of January 30. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**SJR 104:** **Senator Heider** presented this Senate Joint Resolution which provides that the rights to hunt, fish and trap are a valued part of the heritage of the State of Idaho and shall forever be preserved for the people through the laws, rules and proclamations of the State and to provide that the rights set forth do not create a right to trespass on private property, shall not affect rights to divert, appropriate and use water, and shall not lead to a diminution of other private rights.

He said that it is a right to hunt, fish, and trap. In Vermont, some documents go back as far as 1777 pertaining to these three things.

Senator Heider said the language is simple and straight forward, so that when the citizens go to their voting booth, they will understand exactly what this amendment to the Constitution does and what they are voting for.

**Senator Werk** provided a copy of the Attorney General's opinion (which he asked for and it is on file). He asked Senator Heider if the proposed amendment would preclude the state from charging fees for the constitutionally protected right to hunt, fish, and trap. He said that he doesn't have a problem with the concept, but does have a big problem with putting the current system at risk because the language is such that it provides an opening for the potential for a court to rule in that manner.

**Senator Heider** said that in Minnesota's case, they said that hunting and fishing is a valued part of their heritage and shall forever be preserved and shall be managed by laws and regulations for the public good. In Wisconsin, their Constitution says basically the same thing. He stated that the language in all the states' Constitutions are very similar regarding hunting, fishing, and trapping.



**Senator Werk** feels that this would cause the Committee to wander in legal proceedings, and in legal proceedings, words have big meanings. The issue here is the word "right". He stated that the AG is basically saying that the language that we have here places us in a position where the court could rule that the system that we have set up would have to be undone or fund Fish and Game in some other manner to make sure the wildlife herds are properly managed.

**Senator Heider** stated that in the correspondence that he has received from the Attorney General's office, a nine page report, says ".....the fundamental rights found in our State Constitution are those expressed as positive rights. Here, hunting, fishing, and trapping are expressed as a positive right and the proposed amendment would likely be held to establish a fundamental right." Senator Heider feels there would not be a problem.

**TESTIMONY:**

**Ms. Sharon Kiefer, Deputy Director, IDFG**, said the Idaho Fish and Game Commission has discussed this bill and currently their position is to monitor the bill while they learn more about status of constitutional amendments in other states. A copy of Ms. Kiefer's testimony (four pages in length, plus five pages of attachments) is on file.

Some of her testimony is inserted into the minutes. She said "there are two parts to SJR 104. Part one is new language for the constitution that intends to establish the right to hunt, fish, trap as a valued part of the heritage of the State of Idaho forever preserved for the people. However, as with any constitutional 'right', the tricky part is the second part of the proposal which attempts to define limits to the right. SJR 104 defines the limits as not 'subject to' but instead 'through' the laws, rules and proclamations of the state. Compared to other existing constitutional amendments of similar subject, this wording is a bit unique and some might argue, less clearly defines the legislative intent."

"Per more specific legal review, our legal counsel provided the analysis summarized in this testimony. In particular, we bring to your attention the following conclusion: *The meaning of the provision directing hunting, fishing and trapping rights to be 'preserved...through' state laws and regulations is much less clear, particularly since the change was made in response to concern that constitutional rights should not be 'subject to' state regulation. The ambiguous language, in combination with the current legislative history, could lead a court to conclude that the intent of the provision is to restrict traditional state police powers over wildlife. Given the uniqueness and ambiguity of SJR 104, the court may rely on legislative history to determine the meaning of the requirement that hunting, fishing and trapping rights be 'preserved...through' state regulations.*"

"The Commission desires to preserve both the traditions of hunting, fishing, and trapping, and the traditional statutory and Commission regulatory powers so important to providing continued supplies of wildlife. Because of the unique language used in the bill as highlighted above, the Department recommends that the legislature ensure that the legislative history of SJR 104 clarifies that the preservation of hunting and fishing rights requires preservation of traditional regulatory (police) powers to regulate the taking of wildlife, including imposition of license fees." Ms. Kiefer stated that she believes that some of the discussion that has just occurred has begun to establish that legislative record.

**Senator Cameron** stated that it is certainly subject to legal interpretation as to whether a SJR of one drafting is compelled to another drafting and whether the courts would look at legislative history, or whether they would go to other bills that were similarly drafted. He feels that would be a bit of a stretch and typically, when they look at legislative history, they will look back at the history of SJR 104, and not its predecessor. He asked **Ms. Kiefer** if she could provide a "for instance" of where that might have occurred. She replied "that this is exactly what they are trying to articulate, that the legislative discussion about SJR 104 is establishing that legislative history that they believe is challenged." Ms. Kiefer said she did not mean legislative intent relative to any previous bills that were not heard or acted on, but that history, as we are now discussing SJR 104. **Senator Cameron** said that "what is troubling him in Fish and Game's legal counsel's statement is that they believe constitutional rights should be subject to state regulation. He doesn't understand why the legal counsel would think that, based on the language in the bill on lines 18 through 24, unless they are linking a previously drafted piece of a resolution. It looks as if the Department is pointing the court to look at that other piece." **Ms. Kiefer** replied that as they looked at other constitutional amendments in other states, they saw that language and the legal analysis was that was a more common type of framework that they saw in some constitutional amendments. However, it has been used more often and is a bit clearer in its intent, but relative to bearing a higher success rate than what would be found in SJR 104, is not necessarily so. She stated that with either one, their recommendation would still be the same to create a very clear legislative history of the intent of the legislature, relative to preservation of the rights, as well as any traditional powers of the state that are intended to go along with those rights.

**Senator Cameron** said he would appreciate it if Ms. Kiefer, or Fish and Game's legal counsel, would provide him with Idaho Constitutional Amendments that show that type of language. He agreed that it needs to be made perfectly clear, that the ending statement of Ms. Kiefer's comments, that we are allowing, or wanting to allow, the Department of Fish and Game to operate as it is currently operating and that we want them to be able to charge a fee and to regulate hunting, fishing, and trapping as deemed appropriate by state statute. Senator Cameron emphasized that that is the desire and asked Ms. Kiefer for suggestions as to how that would be made perfectly clear. He asked if she was suggesting that legislative intent language be adopted by this Committee, or something more specific in the minutes, or what specifically is she suggesting. **Ms. Kiefer** responded by saying that it is being established right now, as this is a recorded public discussion, as well as recorded in the minutes, and those that have spoken are speaking to the content of the Constitutional Amendment. She believes that the record is being established right now.

**Ms. Kiefer** asked to clarify a point. She said that they are not suggesting that there are Idaho Constitutional Amendments that have the "subject to" rights. Who they are referring to in large part is other states' Constitutional Amendments regarding the right to hunt, fish, and trap, or however they have described it, as either an action or opportunity. She directed the Committee's attention to what Tennessee has done. (This information is provided in the attachments). It is an acknowledgement that this has been used more than once. Ms. Kiefer stated that there is not a "cookbook" out there relative as to how these things are approached. **Senator Cameron** said that "he would like to gently suggest that, in his opinion, it would be a far stretch for some legal counsel to say that it means that they cannot charge, or regulate, because of what Tennessee's or Kentucky's, or some other states' Constitution said different than ours. In his opinion, they will be looking at our Constitution."

**Senator Heider** said that when they originally talked about this bill, they were "making a right - subject to" and that seemed to be a negative thing. They replaced "subject to" with "through" because they wanted it to be a right that is managed through the rules and proclamations of the State. That was the reasoning for the change.

**Vice Chairman Bair** asked Senator Heider what his purpose was for declaring fishing, hunting, and trapping as a right? **Senator Heider** responded by saying that history indicates that the people always thought they had the right to hunt, fish, and trap and he wants to make it a guaranteed right for future generations. **Vice Chairman Bair** then asked "if it was his intent that either the Legislature, or the Commission, or the Department's authority, should be prevented, or inhibited, in any shape or fashion, from regulating or charging fees for licenses or permits for that right to hunt in the State of Idaho?" **Senator Heider** said he is not trying to prevent the Department from having that opportunity and that is the reason for the verbiage.

**Vice Chairman Bair** then referred to the Attorney General's opinion (page three of the letter written to Senator Werk on January 30, 2012). He said the last paragraph will speak both for and against this issue. In the middle of the paragraph it says - "Given the ambiguity of the language, it is equally possible that a court would conclude that the preservation of hunting and fishing rights requires preservation of the subject wildlife, so that the legislature remains free to impose licensing and other restrictions on takings." **Vice Chairman Bair** said that he understands that to say that the Legislature will retain, through judicial review, the right to be able to regulate and charge fees.

**Senator Stennett** said that she wishes success on this bill and if there is any ambiguity by Fish and Game, or the AG, she wants it to be clear and uncontestable. She suggested to use the words "preserve the privilege" or "opportunity", rather than "right", as that seems to be the word that everyone is hung up on. **Senator Heider** replied that the word "right" is a very powerful word and it is the very word that describes what he wants to do and what he wants the Constitution to preserve.

**Senator Tippetts** said that a Constitutional amendment should be carefully analyzed and he asked the Committee to look at Tennessee's language (material from Ms. Kiefer). It says, "The citizens of this state shall have the personal right to hunt and fish, subject to reasonable regulations and restrictions prescribed by law." He stated that to him, there is an important difference in that language, because it says "subject to reasonable....." The Senator said that he supports the concept, but wants to make sure the language is right. He feels the Tennessee law avoids the trap that this bill might lead us into. **Senator Heider** stated that he has been "round and round" with the words "subject to" and "through." He said that he doesn't want the right to be subject to, but the right to be preserved and the right will be preserved through the laws, rules, and proclamations of the State. The Senator said that he feels the wording is significant and it is a positive way of saying it.

**Senator Werk** stated that he would like to support this bill, but wants to know how it will impact the people and what are the consequences? He also wanted more specific language in the bill. **Senator Heider** said that to him, it falls in line with other rights that we are preserving through our Constitution and the bill is written correctly. **Senator Siddoway** asked Senator Heider what the genesis of this proposal is and why is he so concerned about the citizens of the State of Idaho having this right preserved? **Senator Heider** replied that he wants his future generations to have the privilege of experiencing the rights and privileges that he has known. He stated that some sportsmen of Idaho have also come to him and asked that we create this right and it would be a comfort to him to know that it is a part of our Constitution and it will be forever preserved in this great State. **Senator Siddoway** said that when he was on the Fish and Game Commission several years ago, some out-of-state people brought forth an initiative to try to shut down Idaho's

bear hunting. Other groups have sued the Department, or have threatened to sue, over the hunting of some birds. He feels there is a real threat, and his support of this bill is based on those concerns.

**Senator Heider** replied that if we didn't have our Bill of Rights, we would be in dire trouble, as our rights are challenged at every turn. He feels that this bill, to some degree, will protect the ability to hunt, fish, and trap.

**MOTION:**

**Vice Chairman Bair** made the motion to send SJR 104 to the floor with a do pass recommendation. **Senator Siddoway seconded** the motion. The motion **passed** by a majority voice vote. **Senator Werk** voted **no** and asked to be recorded as such. **Senator Heider** is the **floor sponsor**.

**Chairman Pearce** then called on Senator Siddoway to present S 1283.

**S 1283:**

**Senator Siddoway** said this bill would provide that any landowner issued a Landowner Appreciation Program Controlled Hunt Tag (LAP tag) may sell the tag to another person, which is currently prohibited. The tag must be used in the hunt area for which it has been issued. Landowners supply a lot of habitat to wildlife and this would help to recoup some of the losses. The **Food Producers** have sent a letter of **support** for this bill.

**Senator Tippetts** inquired if at any time the landowners were allowed to sell the tags. **Senator Siddoway** said that when the tags were initially sent to the landowners, there were not a lot of restrictions. In the early years, landowners gave the tags away to hunters, but sold the hunters access to their property for hunting.

**Senator Siddoway** stated that he is a landowner and his operation has enough acreage that between himself, his son, and the company, they are eligible for four landowner tags for elk and deer, and he declared a conflict of interest.

**Senator Werk** inquired as to how many tags would be available with this proposal that would enter the market as being for sale to the highest bidder. **Senator Siddoway** said that he doesn't think there is a paper trail for that number and not all of the hunting areas in Idaho got these tags. **Senator Werk** then asked why there couldn't be an open market for tags that are transferable? **Senator Siddoway** said that these tags are under the control of the Commission and while one might think that the tags are for the late, late season, they are not. When these tags first came about, some of the hunts were the more "sought after" hunts.

**TESTIMONY:**

**Ms. Sharon Kiefer** said that the Fish and Game Commission has not yet discussed this bill, so she could not offer a policy position at this time. They will be meeting February 9 and will review this legislation at that time. A copy of her testimony is on file.

**Senator Werk** inquired about access to hunting and if a landowner could charge for that access. **Ms. Kiefer** said that any landowner can charge anybody an access fee to their private property.

- TESTIMONY:** **Mr. James Whittaker**, a rancher from Leodore, said "it is away past time" to market these tags. At any given time during the six-seven month period, he will have 150 game animals (between elk, antelope, deer, and moose) on his ranch. Having a larger spread, lots of hunters come out and the fences are down due to the hunters shooting at the elk. He feels it would be a great benefit to the landowners if they could market the tags, as it is hard to quantify the depredation. This would be one way to reimburse the landowners for the habitat for the game that resides on their ranches. In Lemhi County, 92 percent of the land is either federally or state owned, so that gives the sportsmen a lot of other areas in which to hunt besides on private ground. In Idaho, it is 67 percent. Last year, Mr. Whittaker was allowed only one tag, but by historical measures, he feels they should have had three or four tags.
- TESTIMONY:** **Mr. Douglas Schleis**, testifying on his own behalf, reviewed the history of the LAP tags, including access, family members only, and the loss of some benefits to the sportsmen. He feels the landowners dictated to the Advisory Board - "do this or else." He also said this bill offers no incentive for the landowners to provide access.
- TESTIMONY:** **Mr. Kirk Chandler**, Weiser, also testified on his own behalf. The area where he lives is quite different from that of Mr. Whittaker. He and his neighbors have received depredation permits and he lets anyone hunt who asks. About 400 head of elk move down from the high country when it snows to areas that he has saved for his cattle (in the Spring). If he was to receive rent for pasturing the elk, it would amount to \$4,500 a month. If they had to feed hay to the cows because the elk had eaten all the pasture, at today's prices, it would cost \$25,000 to \$30,000 a month. Mr. Chandler is in support of S 1283.
- ANNOUNCEMENTS:** **Chairman Pearce** announced that due to time constraints, this bill would be carried over to Friday and he will take more testimony if anyone has not had a chance to testify today.
- ADJOURN:** The **Chairman** adjourned the meeting at 3:10 p.m.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

**AMENDED #2 AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Friday, February 10, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	Committee consideration of the Gubernatorial reappointment of Jim Yost to the Northwest Power & Conservation Council	
<a href="#"><u>RS21215C1</u></a>	A Joint Memorial regarding Secure Rural Schools	Senator Keough
<a href="#"><u>RS21194C1</u></a>	Procedure for absentee voting in irrigation district elections	Norm Semanko, IWUA
<a href="#"><u>RS21240</u></a>	To revise provisions relating to the use of moneys in the winter feeding account of IDFG	Chairman Pearce
<a href="#"><u>S 1283</u></a>	Controlled hunt tag/sale of	Senator Siddoway
<a href="#"><u>SCR 111</u></a>	Cocolalla lake level, water appropriation	Brian Patton, IDWR
<a href="#"><u>RS21271</u></a>	Rejecting the application for water appropriation for Cocolalla Lake	Chairman Pearce
Annual Report	"Soil and Water Conservation Update"	Teri Murrison, Administrator, Conservation Commission
Report	Activities of the Idaho Association of Soil Conservation Districts	Bret Rumbeck, Executive Director, IASCD

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Friday, February 10, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 P.M. He asked the Committee for a consensus if they would like to meet at 1 P.M. on Friday's, in the future. It was so agreed.

**MOTION:** The Committee considered the Gubernatorial reappointment of **Mr. Jim Yost to the Northwest Power & Conservation Council**.

**Vice Chairman Bair moved** to send the Gubernatorial appointment of Jim Yost to the Northwest Power & Conservation Council to the floor with the recommendation that it be confirmed by the Senate. **Senator Cameron seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Brackett** will be the **sponsor**.

The **Chairman** said there are three RSs on the agenda and they are as follows:

**RS 21215C1:** The intent of this legislation is to communicate to the President of the United State, the U.S. Secretary of Agriculture, the United States Congress and the U.S. Congressional delegation for Idaho concern that the Secure Rural Schools legislation has not been reauthorized. This has caused critical instability in funding for county road budgets and local school districts.

It further sets out the Community Forest Trust Concept formulated by the counties of Shoshone, Boundary, Clearwater, Idaho and Valley as a possible alternative for national forest land management and asks that a pilot project to determine the feasibility of the concept be included in a reauthorization of Secure Rural Schools.

**RS 21194C1:** This legislation provides a procedure for absentee voting in irrigation district elections and it has no fiscal impact.

**RS 21240:** This legislation would direct that funds in the Winter Feeding account be used only for purchasing blocks, pellets, or hay and requires the Idaho Fish and Game Department to submit a yearly report to the Idaho Senate Resources and Environment Committee and the House Resources and Conservation Committee detailing how funds in the feeding account have been expended. There is no fiscal impact to the general fund.

**MOTION:** **Senator Siddoway** made the **motion** to print RS 21215C1, RS 21194C1, and RS 21240. The motion was **seconded** by **Senator Heider**. The motion **passed** by unanimous voice vote.

- SCR 111:** Next on the agenda was Senate Concurrent Resolution 111. **Mr. Brian Patton, with the Idaho Department of Water Resources (IDWR)**, spoke regarding this issue. Following is his testimony: "Good afternoon Mr. Chairman and members of the Committee. I am with the IDWR and my role at the Department is to oversee the programs, projects, and actions carried out by the Idaho Water Resource Board. The purpose of Senate Concurrent Resolution 111 would be to approve an appropriation of water by the Idaho Water Resource Board for the purpose of maintaining a minimum lake level in Cocolalla Lake, located near Sandpoint in northern Idaho.
- On January 23rd, I previously provided remarks on this matter to this Committee on behalf of IDWR and the Water Resource Board. Since that time, some controversy has developed surrounding this proposal that was not previously evident. On Wednesday of this week, the Bonner County Commissioners voted to oppose this proposal. The Water Resource Board does not want to move forward with this proposal if opposed by the local community. Therefore, the Board will cancel the water right permit and withdraws this submittal to the legislature."
- TESTIMONY:** Written testimony was received from the **Bonner County Board of County Commissioners and 19 landowners/residents of the Cocolalla Lake** area asking the Committee to deny the application and to oppose SCR 111. Copies are on file.
- MOTION:** Following a brief discussion, **Senator Tippetts** made the **motion** to hold SCR 111 in Committee. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.
- RS 21271:** **Chairman Pearce** said RS 21271 simply rejects the application to appropriate water for minimum lake level relating to Cocolalla Lake.
- MOTION:** **Senator Siddoway** made the **motion** to print RS 21271. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.
- S 1283:** The **Chairman** said they would now continue the hearing on S 1283 which is legislation that would allow landowners to sell their landowner appreciation tag. He called on **Ms. Sharon Kiefer, Deputy Director, Idaho Department of Fish and Game (IDFG)**.
- TESTIMONY:** **Ms. Kiefer** thanked the Chairman for the opportunity to amend her testimony of February 8 about S 1283. The Fish and Game Commission discussed this bill on February 9 and does not support it. The Commission considered this bill to be inconsistent with the original intent of the Landowner Appreciation Program to provide hunting opportunity to landowners in controlled hunt Game Management Units that provide important, private, big game habitat and to acknowledge the benefits to public wildlife provided by landowners and their private property.
- TESTIMONY:** **Mr. Dar Olberding, representing the Idaho Grain Producers Association**, testified in support of S 1283. He stated that he is a member of the Idaho Fish and Game Advisory Committee, and they made a decision; however, he said that he called all the executive board members last night, and they feel that it is a positive way to go (selling the tags). By selling the tags, it could relieve some of the liability problems.
- TESTIMONY:** **Mr. Benjamin Kelly, representing Food Producers of Idaho**, representing forty agriculture and farm organizations in Idaho, and their respective memberships voted to support S1283 at their weekly meeting. Their letter stated "S 1283 is a positive route to encourage willing landowners the opportunity to benefit from their property as well as increasing important Idaho recreational activities through the Landowner Appreciation Program." They also believe that this bill is a win-win for the Idaho landowner and the sportsman.



**TESTIMONY:** **Ms. Angela Rossmann**, represents the **Idaho Wildlife Federation**. She feels that "selling" wildlife is underpinning their philosophy and would like for this bill to be set aside.

**TESTIMONY:** **Mr. Wyatt Prescott, Executive Vice President, Idaho Cattle Association**, and on behalf of ICA, he said they stand in support of S 1283. They feel that this bill adequately represents the meaning of landowner appreciation.

**TESTIMONY:** **Mr. Wally Butler, Range and Livestock Specialist for the Idaho Farm Bureau Association**, said they are in support of S 1283.

**TESTIMONY:** **Mr. Stan Boyd, Idaho Woolgrowers Association and Idaho Cattle Association**, said they are in support of S 1283 also. He feels it is only fair to the landowners to have the tag(s) and to be able to sell it, as that is a way to recover some of their costs.

**TESTIMONY:** Speaking against S 1283 was **Mr. John Caywood**, representing the **Ada County Fish and Game League**. He stated that the League opposes the sale of LAP tags as recommended in S 1283. The tags were implemented to insure that ranch families could participate in controlled hunts where they owned land and not envisioned to be just another farm income. A copy of his complete testimony is on file.

**TESTIMONY:** Written testimony was received from **Mr. Dale Tustison** regarding S 1283 and he asked the Committee to not support it.

**Senator Siddoway** was asked to "wrap up" the discussion and he said there wasn't a lot that he could add. He urged the Committee members to support this legislation and also to declare, once again, that he has a conflict of interest on this issue, as he is a landowner and a recipient of the tags. He stated that he could profit from the sale of the tags and asked that his declaration be entered into the minutes and spread across the pages of the Journal.

**Senator Brackett** said that he would like to declare a possible conflict of interest, being a landowner, but is not currently enrolled in the program; however, he does have a potential conflict and does intend to vote.

**MOTION:** **Senator Heider** made the **motion** to send S 1283 to the Senate floor with a do pass recommendation. **Vice Chairman Bair seconded** the motion.

During the discussion following the motion, Senators Tippets, Werk, and Stennett indicated that they could not support the bill. A roll call vote was requested. Voting in **favor** of S 1283 were **Senators Heider, Brackett, Siddoway, Cameron, Vice Chairman Bair and Chairman Pearce**. Voting **nay** were **Senators Tippets, Werk, and Stennett**. The vote was 6-3 in **favor** of a do pass recommendation. **Senator Siddoway** is the **sponsor**.

**PASSING OF GAVEL:** **Chairman Pearce** announced that he needed to be excused as he had to speak at a funeral and passed the gavel to **Vice Chairman Bair**.

**Vice Chairman Bair** welcomed **Ms. Teri Murrison, Administrator of the Conservation Commission** who will present slides depicting the "Soil and Water Conservation Update."

**SPEAKER:**

**Ms. Murrison** said that it has been a few years since they have reported to this Committee and her goal today is to provide a brief update of their changes over the past few years, highlight their programs and services, and demonstrate the incredible work the Conservation Commission and conservation districts are doing around the state.

After the revisions to their statute during the 2010 session, they set a course to communicate and coordinate better with partners, improve transparency and accountability, and do more with less in light of reduced budgets.

Ms. Murrison said they welcomed new leadership: two new Commissioners and an Administrator. They previously had experienced a high turnover in personnel. The Conservation Commission plans to build on 2012's fresh start and they are going forward productively with their partners. They are adjusting to the 52% reduction in the workforce and are seeking alternative funding sources to supplement the 46% reduction in general funds. Their existing resources are focused on district support services, programs, and administration to operate as efficiently as possible.

Their mission is to facilitate coordinated non-regulatory, voluntary, and locally led conservation by and between federal, state, and local governments (including conservation districts) in order to "conserve, sustain, improve, and enhance soil, water, air, plant, and animal resources." The top priorities of the Commission are as follows: (1) Provide districts with support - both technical assistance and capacity building; (2) Operate the Comprehensive Conservation and Incentive Programs to advance conservation activities in cooperation with federal, state, and local agencies and the owners and managers of privately held lands; and (3) Provide administrative support to Commissioners, districts, technical assistance to field staff around the state.

The Conservation Commission was established by the Legislature in 1939 and came under the Department of Agriculture in 1997. There are five Commissioners appointed in staggered five year terms by the Governor and they also have invited five nonvoting members to advise the Commission.

The Resource Conservation and Rangeland Development Program (RCRDP) provides low interest loans to purchase equipment or install projects that have conservation benefits. Many of the loans have been used to install pivot irrigation systems for water savings. They currently have over 160 active loans and a loan portfolio of close to \$7 million. Since the mid 1990's, they have funded almost 600 loans and over \$31 million dollars worth of conservation has been put on the ground. Due to lack of funding, the Water Quality Program for Agriculture (WQPA) was discontinued. They will continue to seek funding for this important incentive program as districts have told them how valuable this program was to fund projects that implemented Total Maximum Daily Load plans (TMDL). The Conservation Commission is the designated agency for agricultural and grazing components of the TMDL plan development. Plans must incorporate landowners' goals along with the condition of the water shed, and suggest practices or projects to reduce pollutant loads and meet statewide TMDL goals. So far, they have completed 82 plans, have 16 in progress, and will be working on 38 more, pending "start work" notification from the Department of Environmental Quality (DEQ). During FY 2011, the Conservation Commission was directly involved in reducing over 278,000 pounds of pollutants from Idaho's ground water.

The presentation included 25 slides of various projects in various stages and Ms. Murrison commented on each one. (A copy of her complete testimony is on file). In closing, she said they pledged to continue working hard to advance incentive-based, good stewardship in Idaho and to continue working hard to avoid more regulations. She thanked the Committee for their support and their time.

**SPEAKER:**

The next speaker was **Mr. Bret Rumbeck, Executive Director of Idaho Soil Conservation Districts (IASCD)**. He said that he would share a few things about the 50 Soil Conservation Districts and how vital they are for natural resource conservation in our state. For those who may not know, Soil and Water Conservation Districts are not just in rural or farm communities. The Ada Soil and Water Conservation District serves the Boise area and has an urban conservation focus.

The membership is nearly at 100%. Of the 50 districts, 47 have paid their full membership dues of \$1,500, two paid \$400, and one district has not joined the Association. This is a big improvement from last year as there were just 42 districts who were members. Mr. Rumbeck said that they have made significant improvements in communicating with their membership, the press, the elected officials, and the public at large. Last April, in two newspapers, it was reported that the districts celebrate Earth Day every day, as they work to preserve and enhance Idaho's natural resources day in and day out. They also work hand-in-glove with the Soil and Water Commission to develop their new strategic plan. Districts had the opportunity to comment and make suggestions at every step of the process. He said they want to thank Ms. Murrison and her staff for allowing such an open transparent process.

Mr. Rumbeck showed two videos relating to the work that they do. Time was allowed for questions.

**Vice Chairman Bair** thanked both Ms. Murrison and Mr. Rumbeck for their presentations.

**ADJOURN:**

He then adjourned the meeting at 2:50 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

**AMENDED #1 AGENDA  
SENATE RESOURCES & ENVIRONMENT COMMITTEE  
AND  
HOUSE RESOURCES & CONSERVATION COMMITTEE  
1:30 P.M.  
WW02 Auditorium  
Monday, February 13, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	<u>State and Federal Sage Grouse Oversight Hearing</u> Idaho Department of Fish and Game Partner, Holland and Hart Office of Species Conservation	Virgil Moore, Director Bill Myers, Attorney Nate Fisher, Administrator
*****		
	Following the Joint meeting, the Committee will go to WW55 to hold a print hearing on the following RSs	
<a href="#"><u>RS21085C1</u></a>	Prohibits the use of certain substances in hydraulic fracturing	Senator Stennett and Senator Werk
<a href="#"><u>RS21226</u></a>	Affirms that development of oil and gas resources is in the public interest and protects the health, safety and welfare of our citizens	Senator Stennett and Senator Werk

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce	Sen Heider
Vice Chairman Bair	Sen Tippetts
Sen Cameron	Sen Werk
Sen Siddoway	Sen Stennett
Sen Brackett	

COMMITTEE SECRETARY

Juanita Budell  
Room: WW37  
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MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Monday, February 13, 2012

**PLACE:** Room WW02 and Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippets, Werk, and Stennett

**HOUSE MEMBERS PRESENT:** Chairman Stevenson, Vice Chairman Shepherd, Representative(s) Wood (35), Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Wood (27), Boyle, Hagedorn, Harwood, Vander Woude, Gibbs, Pence, Higgins, and Lacey.

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Stevenson** called the meeting to order at 1:31 P.M. The Committee Chairman asked our committee secretary to take a silent roll call.

**Chairman Stevenson** introduced the presenters, Virgil Moore, Director of Department of Fish and Game. **Representative Bedke** introduced **Jeff Foss**, Deputy State Director for the Bureau of Land Management (BLM); **Brian Kelly**, U.S. Fish and Wildlife Department; and **Steve Dorrety**, Office of the Secretary to the Interior. **Senator Brackett** introduced visitors from the state of Nevada: **John Carpenter**, Assemblyman; **Pete Gocachia**, Assemblyman; **Demar Dahl**, Elko County Commissioner; **Grant Gerber**; and **Smokey the Bear**.

**Virgil Moore**, Director of the Department of Fish and Game, commented about the sage grouse biology and abundance here in Idaho. Sage grouse are unique in Idaho and their biology is different. They are low productive birds, but they live a long time and have a high survival rate. They can survive Idaho's harsh winter and environment. Their populations are migratory and there is a large movement between seasonal and home ranges. They commonly move an average of 12 miles to 100 miles in their migration, with huge home ranges over 200,000 acres. Their migratory habits complicate the management problem for ensuring habitats for these birds. **Mr. Moore** explained the different priority areas viewed on the display map: the yellow area is considered the Priority area, and the lighter gray/blue area is the General area. The sage grouse have 15 million acres of habitat, 10 million acres is priority habitat; 70% is Federal and 60% is BLM. In Idaho, the majority of sage grouse habitat is on BLM land. Private land is a huge component for the sage grouse averaging at 24%, and tribal land with at least 5%.

**Director Moore** stated there are many sage grouse in Idaho. The sage grouse camouflages itself very well. The primary way to determine the number would be from the male lek counts. The male sage grouse per lek would be the indicator to count the females and chicks. The Department of Fish and Game manages hunting seasons for the sage grouse. The seasons are adjusted within 14 managed zones with limited hunting. Hunts are only permissible in areas that can withstand harvest.

**Chairman Stevenson** introduced **Bill Myers**.

**Bill Myers**, Partner, Holland & Hart, said his firm would be reviewing the issues with the legal framework as well as what the Bureau of Land Management, the U.S. Forest Service and the USDA are doing with the sage grouse issue. He gave a quick overview of the litigation history. In 2005, the Forest Service made a determination the sage grouse did not warrant being listed as a threatened or as an endangered species under the Endangered Species Act (ESA). That decision was challenged by the Western Watershed Project. In 2007, Idaho Federal Judge Winmill reversed the Forest Service decision and sent it back. One of the reasons the Judge said was the Forest Service failed adequately to consider the regulatory mechanisms that were for the protection of the sage grouse species. In the Endangered Species Act, there are five criteria. One of them is the adequacy of regulatory mechanisms that are in place to protect the species that could not be listed. The Forest Service reviewed this issue and in 2010 determined that the sage grouse warranted listing as a threatened species, but was precluded from listing due to other higher priorities at that time. The sage grouse species were given a priority rate of eight, 12 being the lowest rate, due to their moderate danger of existence. The Forest Service made a secondary determination whether the species was determined to be a full listing or not. Those were the two issues which were challenged by the Western Watershed Project and two other environmental groups. The other two environmental groups decided to pursue the case in Washington D.C. The U.S. Fish and Wildlife Service had to decide whether to list sage grouse as a threatened or endangered species by September 30, 2015.

**Mr. Myers** further commented that the U.S. Forest Service and BLM were responding in turn, with two instructional memorandums to all the field staff of what to do regarding this issue. The Forest Service approached these agencies to assist with the regulatory mechanisms that are in place by the deadline of September 30, 2015. The BLM and Forest Service are amending an enormous number of used lands for September 2014. The short-term approach is for the state to create a plan which is acceptable to the Fish and Wildlife Service and the BLM of how to adjust sage grouse preservation in the priority and general areas. The long-term approach is to amend all of the 88 resource and management plans across the West. To amend these plans by the deadline in 2014, Idaho's 15 plans, (BLM 11, Forest Service 4) needed to be amended by the September 2014 deadline. In order to make these planned amendments, a decision has to come from a National Technical Team designed by BLM, which is a group of scientists who convene at the federal and state levels, to advise BLM what to do.

**Mr. Myers** suggested: 1) the State of Idaho to continue to participate in the legal litigation as it has done through the Attorney's General and the Governor's offices; 2) the State of Idaho present its opinion regarding the Resource and Management Plans (RMPs) cases to Judge Winmill, to include the Fish and Game Department, Department of Lands, Department of Agriculture, the Office of Species Conservation, and various constituents represented throughout Idaho; 3) the state expedite the planning process and decide their role in the management of land and wildlife; and 4) the state coordinate with their western sister states to determine which states are dealing with this sage grouse issue.

**Nate Fisher**, Office of Species Conservation (OSC), presented the policy perspective on the greater sage grouse issue and the path forward for sage grouse conservation in Idaho. He commented the sage grouse species issue was very important to the State of Idaho, as well as ten other Western States. There are three components to this issue: 1) the biological, component, which was presented by Director Moore. 2) The legal component; which was presented by Mr. Myers; and 3) the policy component. **Mr. Fisher** said there has been legal litigation for the last 15 years surrounding the sage grouse conservation issue. The State of Idaho has assisted in keeping the sage grouse off the Endangered Species list for over a decade. In 1997, the State of Idaho developed one of the first statewide management plans for the sage grouse species. This plan was updated in 2006 to include new biological information and conservation measures. Input from many stakeholders has been the principal guiding tool in conservation efforts to date. In Idaho and other parts of the western range, the U.S. Fish and Wildlife Service in its 2010 listing determination identified the inadequacy of regulatory mechanisms as one of the major threats to the sage grouse species. The BLM and U.S. Forest Service recently kicked off a National Sage Grouse Planning Initiative to incorporate more stringent sage grouse conservation measures into existing RMPs. He further commented that the BLM's approach needed to be a one-size-fits-all approach, covering the entire range with new restrictions in order to stave off a listing. The sage grouse species is not everywhere on the range so a broad-brush approach would make all areas the same and not prioritize the species' habitats and needs.

**Mr. Fisher** stated the State of Wyoming developed a "core area" approach where the best habitat for sage grouse was protected, meeting the biological needs of the species, and at the same time provided for and protected new development which met the standard as an adequate regulatory mechanism. The Idaho Governor chose to embark on the following goals: 1) To develop a plan that could serve as an acceptable alternative to the federal planning effort; 2) To provide a regulatory mechanism to preclude the need to list the species; and 3) In the event of a listing, minimize the impacts and provide regulatory certainty for land use activities. To accomplish these goals, a "Task Force" would be formed from a diverse group of stakeholders. **Mr. Fisher** reviewed these objectives, and commented the main objective was to develop a conservation plan that is biologically driven, legally defensible and politically palatable. Objectives should be centered on conserving the species and its habitat, while maintaining predictable levels of land use across private, County, State and Federal land. The goals should be incorporated into the BLMs Resource Management Plans (RMPs), consistent with the requirements of the National Environmental Policy Act and it should be calibrated to meet the adequate regulatory mechanism standard under the ESA. **Mr. Fisher** said they will seek the pertinent scientific information and technical expertise to inform the Task Forces's deliberations regarding key sage grouse habitat. The Governor has submitted a letter to the Idaho Legislature asking them to be involved in this process as well.

**Senator Tippetts** asked how would the hunting season be reconciled with the listing? **Director Moore** stated we have places where we can still have limited hunting seasons. But across the entire range, Fish and Wildlife Services found the productivity available from sage grouse was not sufficient for the entire range. He said, we need to maintain our best areas, as well as work on some of the other areas so we can consistently show in the future that the regulatory mechanisms are there to ensure the productivity of the sage grouse. **Senator Tippetts** asked who decides what is a sufficient population or what is a broad enough range. **Director Moore** said, we decide that with proposals from the Fish and Game Commission. For the wide range, there is a determination by a technical team through an advisor of the Fish and Wildlife Services.

**Representative Hagedorn** asked if the areas between Idaho and Nevada were actual target areas. He further commented that before we proceed, we should have the BLM, Forest Service and Fish and Wildlife Services help us understand what we don't know. **Director Moore** replied that Idaho does have a few of the best habitat for sage grouse as does Northern Nevada and Eastern Oregon. But truthfully, he said, Idaho habitat has to be treated for this to succeed. The three state range: Idaho, Nevada and Oregon, are hugely important to pulling all this together.

**Senator Stennett** asked where these funds came from and would there be an ongoing monitoring system in place in the next few years regarding the \$3.1 million set aside for current habitat resurrection, research and monitoring projects in 2012? **Mr. Fisher** commented on a few examples of what has been done with these funds. The funds have been used for habitat restoration, public outreach, field tours and radio telemetry. He further commented these funds came from the Congressional Delegation and unfortunately were being considered for earmarks. He said currently, we are working with our Congressional Delegation to reinsert language in order to provide us with additional funding.

**Representative Bedke** asked if the 3% man-made impact was over and above the status quo and how was that qualified. **Mr. Myers** replied that 3% of all of land surfaces with regards to ownership within the priority habitat areas does include current disturbed land. This includes power lines, homes, mines, roads, and some fire roads. If the disturbances are under 3%, one may have the opportunity to disturb more areas. If the disturbances are over 3% one would not disturb those areas.

**Representative Bedke** asked if Idaho was set to be the litigation state for the plan in Wyoming. **Mr. Myers** said to keep in mind there are two primarily core populations of sage grouse according to the Fish and Wildlife. One is in the three state areas of Idaho, Nevada and Oregon. The other one is located in Wyoming. We look at these two areas differently.

**Representative Harwood** asked who was telling the truth on the entire situation? He queried can you tell me what is going on? **Mr. Myers** commented these are draft maps from BLM. **Representative Harwood** asked for a couple of names of the local working group members on the Task Force. **Mr. Moore** replied this information was in the distributed information. **Mr. Fisher** stated two local working group names were: Wayne Pratt, with the Eastern Grazing Association and Donna Bennett, with the Owyhee County local working group.

**Representative Harwood** asked if there were any conservation organizations in the local working groups. **Mr. Fisher** commented there were two conservation organizations who have requested to be invited to participate with the Task Force local working groups. **Representative Harwood** asked if this issue would be similar to the three-state wolf committee, working together in the same fashion. **Director Moore** stated we would be working from a science standpoint with the other two states for consistency. Each state will have their own unique management plan.



**Senator Brackett** asked how can we expect the outcome of this effort to be any different than some of the other conservation plans done previously? And, he said, he would like all three presenters to give their opinion. **Mr. Myers** commented that the State of Wyoming was held up as the icon of how this process works. The BLM gave the State of Wyoming a pass from compliance. BLM informed the State of Wyoming they will be issuing instructional memorandums specifically for them and would include the National Technical Team recommendations. The State of Wyoming put together a plan which was approved by BLM, the Forest Service, and two other service parties. Now the BLM was bringing in a new set of criteria. **Mr. Fisher** replied that in a short-term perspective, our attempt is to find our own solution within Idaho and try to comply with the BLM and the Fish and Wildlife Service. In the larger perspective, if all the states approach this issue, it would be very similar to the wolf issue. **Director Moore** commented that we can come up with a state plan and then the Secretary of the Interior would do his part to see that plan came to fruition.

**Representative Raybould** asked what would the impact be on the sage grouse on private property that is in agriculture now. **Mr. Myers** replied the sage grouse were not yet a listed species and they were listed under the Species Act. The BLM and the Forest Service had no authority to manage private land. However, he said if there was a patch of BLM land all around the habitat area, this would be considered a human cause disturbance, which would go into the 3% calculations. **Representative Raybould** asked if it would be a problem for the property owners for farming and leasing grazing land, west of St. Anthony and Ashton, which are bordered by BLM lands. **Mr. Fisher** commented that one of the major concerns was the protection of private property in Idaho.

**Representative Bedke** asked what could the Legislature do at this point to address this gap. **Mr. Fisher** replied that the Legislature plays a very valuable role in this process and he said we want and need the Legislature's input. One of the roles the Legislature could play would be that of a Legislative Oversight committee.

**Chairman Stevenson** commented that **Chairman Pearce** had requested the Senators to be excused to move to Room WW55 at 2:53 P.M.

**RS 21085C1** **Senator Stennett** presented **RS 21085C1** to the Committee for print. The purpose of the RS was to prohibit the use of certain substances in hydraulic fracturing and to ensure the health and safety of our citizens without materially impeding the development of our natural resources. This legislation would prohibit the injection during fracking operations of known human cancer causing compounds as listed in the latest edition of the "Report on Carcinogens" prepared by the National Toxicology Program.

**MOTION:** **Senator Stennett** moved, **seconded** by **Senator Werk**, to print **RS 21085C1**. **Senator Tippetts** opposed to print line 11 with no consideration. Motion **failed** by **voice vote**.

**SUBSTITUTE MOTION:** **Senator Werk** moved, **seconded** by **Senator Stennett**, to print **RS 21085C1**. The motion **failed** by **voice vote**.

**RS 21226** **Senator Werk** presented **RS 21226** to print to the Committee. Currently, the state statute excludes consideration of protection of public health, safety and welfare as a public interest in the development of oil and gas resources in our state. This legislation remedies this oversight by affirming that development of oil and gas resources is in the public interest when implemented in a manner that protects the health, safety and welfare of our citizens.

**MOTION:** **Senator Werk** made a motion to print **RS 21226**, **seconded** by **Senator Stennett**. Motion **failed** by **voice vote**.

**ADJOURNMENT:** **Chairman Pearce** thanked the Committee for the good work, and adjourned the meeting at 3:00 P.M.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

**AMENDED #1 AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Wednesday, February 15, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	Confirmation hearing for Tom Schultz, appointed as Director of the Department of Lands and to serve a term commencing September 26, 2011; to serve at the pleasure of the Governor.	Tom Schultz
	Presentation of two proposed Joint Resolutions regarding the "Disposition of School and University Endowment Lands".	Senator Siddoway
<a href="#"><u>S 1291</u></a>	Rangeland Center, University of Idaho	Senator Brackett
<a href="#"><u>RS21255</u></a>	Resolution rejecting a pending rule of the Idaho Fish and Game Commission	Vice Chairman Bair

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, February 15, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 P.M., and the Committee Secretary took a silent roll call.

**APPROVE MINUTES MOTION:** **Senator Brackett** made a **motion, seconded by Senator Siddoway**, for the Committee to approve the February 1, 2012 minutes. Motion passed by **voice vote**.

**APPROVE MINUTES MOTION:** **Senator Tippetts** made a motion, seconded by **Senator Heider**, for the Committee to approve the February 3, 2012 minutes. Motion **passed by voice vote**.

**CONFIRMATION HEARING:** **Chairman Pearce** invited **Page Ryan Chapman** to the microphone as this will be his last meeting with the Committee. **Mr. Chapman** shared with the Committee that he had learned many things, but the most important thing he learned, is that our elected officials are viewed as figureheads, but you are just ordinary people trying your best, to ensure the State of Idaho can be a great state. **Mr. Chapman** received a letter of recommendation and a gift from the Committee for his service.

**Tom Schultz** commented he spent the last 15 years in managing state lands for the Montana Department of Natural Resources of Lands, where he managed a lot of timber land, range land, oil and gas developments, coal development and other things. Prior to working for the state of Montana, he was a U. S. Air Force Ballistic Missile Launch Officer, working primarily in Wyoming. He earned several degrees, a Bachelor's degree in Government from the University of Virginia, a Master's degree in Political Science from the University of Wyoming, and a Master's degree in Forestry from the University of Montana.

**Tom Schultz** commented on three primarily principles that the Department wanted to achieve: 1) to generate revenue; 2) to be stewards of the land; and 3) to develop leaders. In the fiscal year of 2011, the Department generated over \$67 million, being one the few agencies that generates revenue that contributes to schools. Over the last 15 years, they generated over half a billion dollars for public schools and institutions from timber sales alone. Over the half last century, they have generated over a billion dollars in revenue. They have 250,000 inland units of range lands and other opportunities such as wind energy, oil and gas potential, and residential development. The Department provides different types of protection, such as fire protection. He further commented that other programs that will be overseen are forest management, forest resistance, fire management, community forestry, forestry legacy, the Service Mining Act, and the Land Protection Act. **Mr.**

**Schultz** stated the Department's vision is to focus on being a Premier Organization in the state of Idaho and the Western United States.

**Senator Siddoway** asked what are Idaho's strengths, in comparison to Montana. **Mr. Schultz** replied, one of Idaho's strengths is the opportunity to know people directly and to build relationships. The Department strives to work effectively with the people, organizations, and the state leaders of Idaho.

**Senator Brackett** asked if there were any particular initiatives or areas of interest the Department would like to pursue. **Mr. Schultz** commented that the Department is reviewing the structure, the policies and procedures, and the budget processing at this time. He stated that in terms of new issues, they are involved in the sage grouse issue, timber issue regarding Snake River Basin beautification, and the oil and gas issues.

**Senator Heider** asked if there were any areas to watch as we make our decisions. **Mr. Schultz** replied there are many concerns, like risk management concerns, but there is nothing we can do to eliminate all risks. He further commented that Idaho can learn from other States. The Department is communicating with other states, such as Texas and Wyoming, to learn from their expertise with oil and gas issues.

**Senator Werk** asked if the Department was considering having a specific set of ethics and conduct standards associated with the oil and gas industry. **Mr. Schultz** stated there was a State government code of ethics in place.

**Chairman Pearce** commented that **Senator Siddoway** will be presenting a couple of proposals to the Committee and no vote was required today. **Senator Siddoway** will be presenting these two proposals for discussion only.

**Senator Siddoway** presented two proposed Joint Resolutions regarding the "Disposition of School and University Endowment Lands." In 2010, there were two Constitutional Amendments that passed the Senate floor and went to the House floor, and there were some concerns, so these public school endowment plan proposals were given back. He commented there have been concerns about cottage sites on the lakes and land owners were frustrated with the increasing rental rates. The landowners contacted the Department of Lands for assistance. The Constitution has two provisions within the endowment plan: 1) to have a public auction; or 2) do a land exchange, which is very time-consuming. Many people have become frustrated with these two provisions.

**Senator Siddoway** stated that after reviewing the concerns, it was decided to change the language in these two proposed joint resolutions. Beginning with Section 1, Section 8, Article IX, page 1, that following language was stricken: "subject to disposal at public auction", line 38 and 39; and "the legislature shall provide" line 40 and 41, and to include the new language of "or other disposition," on line 41. On page 2, line 1 and 2, the following language was stricken, "and for the faithful application of," and to include the new language on line 2 through 5, "at public auction or through such other means a prudent investor would use while considering the purposes and terms of the trust and while exercising reasonable care, skill and caution." On line 5, the word "thereof," was stricken, and includes the new language of "from any disposition of lands shall be faithfully applied." On line 7 the words of "provided, that not to exceed," was stricken to include the new language, "No more than", continuing on line 7, "one hundred sections," was stricken, and includes the new language of "ten thousand acres" on line 8. On line 9 through 11, "and to be sold in subdivisions of not to exceed three hundred and twenty acres of land to any one individual, company or corporation" language was stricken and replaced with the new language of "other disposition," which would give a land owner an option of different types of sales to dispose of land, for example, private sale or a partnership contract sale.

**Senator Siddoway** commented on another concern, what is a prudent investor. A prudent investor is someone that is in charge of an endowment trust, making decisions on long range goals and returns, for the benefit of the trustees of the trust. The rules regarding a prudent investor would be faithful to the terms of the sale or exchange of the land.

**Senator Siddoway** stated that the timber constituents had concerns with the language regarding "the strike line of 100 sections, 320 acres." This language was changed to 10,000 acres.

**Senator Siddoway** commented on the next proposal that the language had been stricken "ten dollars per acre, and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation" and included the new language of "the appraised price." The remaining language for these two proposals are unchanged.

**Senator Stennett** asked when did you decide on the figure of 10,000 acres and is that still according to any one individual company or corporation like it was for the 320 acres. **Senator Siddoway** replied yes. **Senator Stennett** asked if the Department of Lands participated in these changes directly with you. **Senator Siddoway** commented, "yes they did." **Senator Stennett** asked did you envision 10,000 acres being a large tract of land an option to a landowner? **Senator Siddoway** stated, "I don't know of a company having a demand for that amount of land. Ranchers may consider these large tracts of land if the land is near their ranches." **Senator Stennett** asked if 10,000 acres being the cap, could there be several transactions made to meet that cap. **Senator Siddoway** replied yes, that was his understanding. **Senator Stennett** asked within the guidelines you proposed, who determines the price of those lands? **Senator Siddoway** commented the price will be determined by an appraisal reflecting the fair market value at that time.

**Vice Chairman Bair** asked if the closing costs showed up on the county records and would they be transparent. **Senator Siddoway** replied they would, but after the fact. **Vice Chairman Bair** asked when a prudent investor is participating in the sale, would there be good rule of policy that would be followed, using the prudent investor rule in the state code. **Senator Siddoway** stated exactly, this whole thing is driven by investors and all have to follow the rules.

**Tom Schultz** commented the Department, in 2010, supported this concept, coupled with an outreach policy that in order to move forward, a significant educational component, as well as working with stakeholders had to take place for all concerns to be addressed. He stated the Department has not been able to follow through with this outreach policy and the educational component at this time. At this point in time, the timing may not be right for our Department's perspective to move forward with this issue. He said we can learn from other states that have been through this process. The state of Montana, between 2006 to 2011, sold 50,000 acres which was roughly 10,000 acres per year. The primary client to acquire such large tracts of land were ranchers. In Idaho there have been 17 sales through land banking. The primary transactions have been exchanges.

**Senator Siddoway** asked what would the process be from beginning to end, and who was obligated to pay for the services of a land sale. **Mr. Schultz** replied there would be an application process at a regional office. An evaluation process would take place to see if the Department would want to dispose of the said land, then an appraisal would be the next step. The Department would direct the scope of the appraisal and the applicant would receive the funds to pay for the appraisal. The Department would receive the appraisal, listing the minimum price for which the land could be sold. There would be an auction process according to the state law.

**S 1291:**

**Senator Brackett** presented **S 1291**, Rangeland Center, University of Idaho. He stated this legislation creates a statute the Rangeland Center at the University of Idaho for the purpose of creating a new model for interdisciplinary research, education and outreach to fulfill the University's land grant mission. The faculty will have expertise in grazing, rangeland ecology, entomology, soil science, economics, rural sociology, fish and wildlife management, invasive plant management, forage production, animal science, fire ecology, restoration and the use of spatial technologies to understand and manage rangelands. The Center will have a director who will be responsible for fiscal and human resources. The Center will be under the control of the State Board of Regents, through the Deans' of the College of Natural Resources and Agriculture, and Applied Sciences at the University of Idaho. This legislation will provide an advisory council, with a variety of interests and expertise relating to rangelands. The modern challenges of rangeland management require integrative thinking and innovative practices to maintain and restore these lands and the human communities that rely on them. The Center will be comprised of researchers and educators from the College of Natural Resources, the College of Agricultural and Life Science, the University of Idaho Cooperative Extension, other colleges or units in the University of Idaho, and other agencies and academic institutions that may contribute.

**Senator Werk** asked if staff from the University of Idaho would speak to the Legislation. **Senator Werk** asked how there was no impact to the general fund. **Senator Brackett** commented the Rangeland Center has been created and it utilizes the staff and funds already in place. When it moves forward, there will be a request for funds. As of now, there are no funds being requested. **Senator Werk** asked why this was being requested to be in statutory language. **Senator Brackett** stated, by having this bill in statutory language, it would be institutionalized for longevity. He further commented that it has taken years to get to this point. It is vital the University of Idaho maintain its credibility.

**Chairman Pearce** asked if the University of Idaho was aware of what had been done, or was this about rangeland protection? **Senator Brackett** replied he has worked closely with the University of Idaho and the Range Department, combined with other units. **Chairman Pearce** asked if the University of Idaho was fully aware and supportive of this bill. **Senator Brackett** stated, "yes."

**Joe Stegner**, the University of Idaho Special System President for State Government Relations, stated **Senator Brackett** has had many conversations with the University staff, and the University is very excited about this proposal and offered all of its support. **Senator Werk** asked about the government's structure for this proposal Rangeland Center, how the work will be accomplished, who will be directing the operations, what kind of qualifications the University is looking for in a director for the Center. **Mr. Stegner** replied that he is not the appropriate person to give the assurance needed at this time. He stated there is a chain of command with the University of Idaho, each staff member was accountable and was asked to justify their actions to the University and the Legislation. **Senator Werk** asked **Mr. Stegner** if he was aware, or if the sponsor was aware of whether or not the Legislature had taken this step in the past, of placing in statutory language. **Mr. Stegner** stated the League of Forestry was a program placed in statute. Idaho has the opportunity to become a premier rangeland advancement research center in the United States, and this is a critical step for the University of Idaho to step forward in this area.

**Wally Butler**, Idaho Farm Bureau Range and Livestock Specialist and Vice President for the Society for Rangeland Management, and an alumni of the University of Idaho, commented Dr. Karen Laushbaun is currently the Director of this Rangeland Center and prepared the framework for the Center. The Society of Rangeland Management does accredited range management programs worldwide. In North America there are 13 accredited range management schools. Due to budget cuts and departments being in peril a few years ago, we have now six accredited range management schools. He further commented that the University of Idaho has always held a current accreditation. The state of Idaho is 67% federally-owned range land and most of the Western United States averages 70% owned.

**MOTION:** **Vice Chairman Bair** made the **motion, seconded by Senator Heider**, that the Committee forward **S 1291** with a "**do pass**" recommendation. **Chairman Pearce** commented that there was an ESA study on the wetlands and Everglades, and from that study many animals, such as raccoons, were removed to resolve some problems that arose. This data is very important when there are problems. Idaho can use all the help they can get and needs to move forward to be proactive in this movement. The motion **passed by voice vote**.

**RS 21255:** **Vice Chairman Bair** presented **RS 21255** to the Committee. This is the concurrent resolution rejecting a pending rule docket of the Idaho Fish and Game Commission, relating to Rules Governing Licensing as being not consistent with the Legislative intent. The effect of this concurrent resolution, if adopted by both Houses, would be to prevent the entire pending rule docket from going into effect. This Committee previously rejected **RS 21255**. **Vice Chairman Bair** asked the Committee for a vote to move **RS 21255** to the State Affairs for introduction to a print hearing.

**Senator Werk** said if this **RS 21255** is printed in State Affairs, will we see it again to discuss, or will it go to the Senate Floor? **Chairman Pearce** commented the Committee will request **RS 21255** to be returned to this Committee.

**MOTION:** **Senator Heider** made the **motion, seconded by Senator Siddoway**, that **RS 21255** to be sent to State Affairs for a print hearing. The motion **passed by voice vote**.

**Chairman Pearce** commented he was to appear before the Joint Finance Appropriations Committee (JFAC). He asked the Committee for input, and said his report would include the following items: Fish and Game, Department of Lands, Guides of Outfitters, Water Resources, Office of Species Conservation, and Department of Environmental Quality (DEQ). **Senator Werk** commented on the length of time the Committee spent on the oil and gas rules.

**ADJOURNMENT:** **Chairman Pearce** adjourned the meeting at 2:50 P.M.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

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**AMENDED #1 AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:00 P.M.**  
**Room WW55**  
**Friday, February 17, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<b>NOTE TIME CHANGE!!!</b>		
	Committee consideration of the Gubernatorial appointment of Tom Schultz as Director of the Department of Lands	
<a href="#"><u>S 1287</u></a>	City irrigation system, authorized	Norm Semanko, IWUA
<a href="#"><u>S 1289</u></a>	Irrigation districts, appeals	Norm Semanko, IWUA
<a href="#"><u>S 1290</u></a>	Drainage districts	Norm Semanko, IWUA
<a href="#"><u>S 1320</u></a>	Irrigation districts/elections	Norm Semanko, IWUA
<a href="#"><u>SJR 105</u></a>	Right to hunt	Senator Heider
	Presentation - "Oil and Gas Industry"	John Peiserich, Adjunct Professor, Oil & Gas Law, UALR William H. Bowen School of Law, Little Rock

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Friday, February 17, 2012

**TIME:** 1:00 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order and the committee secretary took a silent roll call.

**GUBERNATORIAL APPOINTMENT:** **Chairman Pearce** presented to the Committee the Gubernatorial appointment of **Tom Schultz**, as the Director of the Department of Lands. **Vice Chairman Bair** moved, seconded by **Senator Heider**, to send the gubernatorial appointment of **Tom Schultz**, as the Director of the Department of Lands, to the floor with the recommendation that it be confirmed by the Senate. The motion **carried by voice vote**. **Chairman Pearce** will carry **Mr. Schultz's** appointment on the Senate floor.

**APPROVAL OF MINUTES MOTION:** **Vice Chairman Bair** made a motion, **seconded by Senator Heider**, to approve the minutes of February 6, 2012. The motion **passed by voice vote**.

**S 1287:** **Chairman Pearce** introduced **Norm Semanko**, with the Idaho Water Users Association (IWUA). **Mr. Semanko** commented that there were some legitimate concerns identified with **S 1287**, and asked to have it pulled from the agenda at this time. This legislation would authorize city irrigation systems to extend into established areas of impact for the delivery of irrigation water.

**MOTION:** **Vice Chairman Bair** made the motion, **seconded by Senator Cameron**, to hold **S 1287** in Committee. **Senator Cameron** asked if there were two bills regarding city irrigation systems. **Mr. Semanko** replied no. The motion **passed by voice vote**.

**S 1289:** **Norm Semanko**, of the Idaho Water Users Association (IWUA), commented that **S 1289** replaced the outdated language and clarified the specific statutory provisions under which appeals may be taken from decisions by the boards of directors of irrigation districts.

**Senator Werk** asked if these code section references were the only code sections where this type of appeal could be made or could a particular code section be chosen for this legislation. **Mr. Semanko** replied that he would like to introduce **Mr. Dan Steenson**, Attorney with Ringert Law, to provide an accurate response to this question. **Mr. Steenson** replied that he drafted **S 1289**. The Title 43 Irrigation District statute that went into effect in 1906, has been the guiding tool for such appeals in the past. The appeal procedure to the Board of County Commissioners has been changed. The reference was historically used in Title 43, which was to provide appeals taken from county commissioners pursuant to the Idaho Administration Act. He further commented the Idaho Administration Act carried a number of procedures that may not be applicable for irrigation board decisions. The code provision that is referenced

here can provide the best standards and processes. **Senator Werk** commented that it seemed these appeals were fairly restricted.

**MOTION:**

**Senator Cameron** made a motion, **seconded** by **Vice Chairman Bair**, to send S1289 to the floor with a "**do pass**". The motion **passed** by **voice vote**. **Senator Heider** will sponsor **S 1289** on the Senate floor.

**S 1290:**

**Norm Semanko**, of the Idaho Water Users Association (IWUA), commented that **S 1290** provides authority for the reapportionment of benefits within a drainage district when it is determined that the lands benefited or the amount of said benefits has either changed or is in error.

**Senator Tippetts** asked if the reapportioning included assessments. If not, then what does the reapportioning refer to in this bill. **Mr. Semanko** replied the amount of benefits are directly related to the amount of the assessments. He further commented that if the benefits are not properly apportioned, then there are landowners being under or over-assessed based on the actual benefit they are receiving. He stated there would need to be matches made and then corresponding changes made. **Chairman Pearce** asked if that would include just drainage districts or all water districts. **Mr. Semanko** replied this is only for drainage districts.

**Senator Werk** asked about the code 422921 as it refers to court confirmation hearings. **Mr. Steenson** replied this section of the bill is referring to Drainage District No. 2, the largest drainage district in the state. It is located on and serves land north of the Boise River. There was a problem that the landowners received flat rate assessments that are inconsistent with the original apportionment benefits. To modify these assessments, there needs to be a modification in the benefits that are apportioned to the lands, to make an accurate redetermination of those benefits. He further commented, it is necessary for this process to occur, a clear process to provide notice to landowners of the apportionment and redetermination of benefits and assessment. The procedure for this type of process goes as follows: 1) a hearing process, 2) a decision process, and 3) then a court confirmation process. The bottom line of this type of process is to afford the landowners the opportunity to know and participate in the process and challenge the determination if the landowner feels the apportionment of the benefits are incorrect. **Senator Werk** asked if the code reference was for a landowner to have the means to participate in the court confirmation process. **Mr. Steenson** replied yes, and a court confirmation process is different than an appeal process. He further commented there was a need to follow the same process in redetermining the benefits.

**MOTION:**

**Senator Tippetts** made a motion, **seconded** by **Senator Brackett**, for the Committee to send **S 1290** to the Senate floor with a "**do pass**" recommendation. The motion **passed** by **voice vote**. **Senator Tippetts** will sponsor **S 1290** on the Senate floor.

**S 1320:**

**Norm Semanko** of the Idaho Water Users Association (IWUA), commented that **S 1320** provides a procedure for absentee voting in irrigation district elections. Title 43 of the Irrigation District Code allows for and identifies how to proceed with this process. The Attorney General's office recommended that absentee voting be required in the irrigation district elections. He further commented that at this time there is no absolute uniform agreement amongst our attorneys, as to the exact language referring to the procedure of verifying identification, due to a difference of opinions. **Mr. Semanko** requested a move forward with **S 1320** to the 14th Amending Order, to have a procedural process for voting in the irrigation districts at this time. He asked, in absence of this request, that **S 1320** be approved allowing their attorneys more time to work on this bill, and amend it on the other side.

**Vice Chairman Bair** asked where this exact language came from and was this language taken from other sections of code. In the handling of absentee ballots, was it consistent with other districts or the general voting election overall, or was it completely different. **Mr. Semanko** replied, absent this language, there is no provision in the code on absentee voting and no reference to follow. No registration is required. If you are a landowner, you are allowed to vote. He further commented that there is the issue of how to recognize absentee voters. There are different provisions at different levels of government and other irrigation districts regarding this issue to recognize absentee voters. **Mr. Steenson** commented that the general election laws provided for registration to vote and the irrigation districts don't require registration. But it is required to verify who you are to be voting as a qualifying elector and to have an initiation of a note within the district (Title 43, Chapter 11). The attorneys who originally drafted this bill worked from Title 43, Chapter 10, following the absentee voting ballot process. He further stated that this draft provides for an elector to apply for an absentee ballot in person or in writing within an irrigation district. If the elector is entitled to receive this ballot: 1) the absentee ballot would be provided to the elector; 2) the elector would be entitled to vote by absentee ballot; and 3) the election would need to satisfy the oath requirement of the irrigation district statutes, by having someone qualified to administer oaths like a notary. This process can cause a hindrance if the elector cannot locate a notary to administer the vote. He commented that under Title 43, which ordinarily requires an administration of oath would be changed in this bill to allow someone to vote by absentee ballot without having it administered by a notary. The proposed language is patterned after the general election laws. **Mr. Semanko** commented that if it pleased the Committee, a new RS could be drafted.

**MOTION:** **Senator Cameron** made a motion, **seconded by Vice Chairman Bair**, to hold **S 1320** in Committee. The motion **passed by voice vote**.

**SJR 105:** **Chairman Pearce** commented **SJR 105** was changing again and he had a request from the sponsor to withdraw and to review this at a later date. This bill amends the Constitution of the State of Idaho to preserve the rights of the people of Idaho to hunt, fish, and trap.

**PRESENTATION:** **Chairman Pearce** asked **John Foster** of the Idaho Petroleum Council, to introduce **John Peiserich**, UALR William H. Bowen School of Law Adjunct Professor, to conduct the Oil and Gas Industry presentation. **Mr. Peiserich** is a well-respected petroleum attorney in the United States.

**Chairman Pearce** asked the Committee to review the Eastern Snake Plain Aquifer Progress Reports in their red folders, to be discussed next week. He further commented to the Committee that next week would be the oil and gas week. Five bills passed through the House and four of them are to be presented to this Committee, with the fifth one, which just passed the House, is to be assigned to us .

**Mr. Peiserich** moderated the oil and gas industry presentation and commented there is a great opportunity for Idaho. There has not been a producing oil well on the state grounds since the 1930s or 1940s. Oil wells can be in rural settings and safely in urban settings as well. He further stated, we should envision the oil and gas industry in Idaho. The most traditional version, like the Jed Clampett's version, has a sand reservoir that holds gas and one can simply stick a straw down into the ground to get in that reservoir. At the end of the drilling process, the drilling rig would go away, and the blow out premier would be replaced with what the industry called a Christmas tree, which is basically a bunch of mechanical valves to allow the flow of gas to be connected to the pipeline.

**Mr. Peiserich** commented that 85% of the total energy consumption in the United States were hydrocarbons; 23% coal base, and the other 62% liquid base, natural gas or oil; and 8% is nuclear base and the remaining 3% is hydro-powered. Idaho is blessed with 50% of the power being generated by hydropower. Our goal is to produce Idaho natural gas into a power plant and provide power to homes. The most common ways to use natural gas are: 1) industrial; 2) commercial; 3) residential, and; 4) with electrical power (utilized by manufacturing companies). The United States is incredibly dependent on foreign reserves. There has been real development seen over the last few years in North America of shell plates with a large growth of those shell plates in the United States. There is a need to develop our own resources.

**Mr. Peiserich** commented on the hydrocarbon chemistry. Oil is considered a long chain hydrocarbon and natural gas, a short chain hydrocarbon. It all comes from platens that fell to the sea floor many years ago and that has accumulated, forming black shell. Black shell is simply a mud that accumulates at the bottom of an ancient sea/ocean, that compresses with a result of absence of oxygen. In the absence of oxygen, this organic matter is compressed over time and that makes shell. Based on how much heat and pressure is placed on the shell, oil and gas products can be produced. The first thing found is a solid form called carigen. In 90 degree sea temperature with the appropriate heat and pressure, the shell produces oil, and finally at 150 degrees sea temperature, the shell can produce natural gas. Beyond 150 degrees, this being a thermogenetic process, there is a level that the gas is actually burned off and goes away. This rock is where all this takes place, as we call it in the industry, a source rock. We look for what nature traps and we refer to it as oil traps. It is a layer of rock that prevents oil and gas from migrating up to the atmosphere.

**Mr. Peiserich** stated there is a good conventional resource in the western Idaho basin. The basin has good frosting and permanent ability. He further commented on unconventional resources, which was about creating permanent ability and frosting in order to extract the gas by hydraulic fracturing. What we have in Idaho is a very traditional set up, where we have a variety of surfaces. We have sands that have water in them, which is where our aquifers are found and stringers of water intertermingle with other clays. The deepest water wells are at 216 feet. Below that, there are very silky sands down to about 700 feet, imperil shells for about 1,000 feet, or until the salt level. About 1,850 feet is the shallowest well seen in the western Idaho basin. To start to build a well, the following takes place: 1) Set conductor pockets, which establishes a good position to start from, and to keep water from getting in the well, and also prevents dirt from falling in the well; 2) Surface testing, going through the aquifer, through the silky sands, and setting it into the imperil shells which make a good base to anchor in; and 3) Surface production casing.

**Mr. Peiserich** introduced a tape with Dr. Charles Groat, the 13th Director of the U.S. Geological Survey, commenting on oil and gas production. Dr. Groat said that drilling for natural gas, in itself, doesn't pose a problem if it is done properly. As for development, there are places in the U.S.A. where natural gas is near the surface. In the western Idaho basin, around Weiser and Payette, people have commented that natural gas has been in their water wells for a hundred years. This is one of reasons why production companies come to Idaho. We do seismic surveys, creating a sound wave which travels through different types of rock at different rates of speed, showing the little reservoirs and the voids. These voids, or otherwise known as pockets, are what we want to drill down into to find the natural gas from 2,000 to 3,000 feet. Seismic surveys provide important information, such as: 1) where to find the pockets with natural gases; and 2) where volcanic rock is located. In the Boise area, very little natural gas pockets are located in volcanic rock areas. We can also monitor in the wells with

seismic geophones to track, for example, fracturing. The cost is about \$1 million dollars a well. The risk is less here in Idaho, making Idaho very attractive to us.

**Senator Werk** asked about the concerns of the nearsighted processing in order to dehydrate the gas and to decide what is safe with a dehydrated plant. **Mr. Peiserich** replied that his presentation was a general overview, and he would show a video regarding the processing aspect of natural gas. He said, for example, if you have wet gas, there are options of processing, depending on the type of formation and of the type of field in your well casing. He pointed out that Idaho does have a concern regarding transportation of the product. Oil is easier to transport, but the natural gas is a real key to developing pipelines. The United States is not considered a true hot bed of oil and gas development. How is the environment protected? At the National level, you are protected by the Clean Water Act, the Cleaner Air Act, the Safe Drinking Water Act, the National Environment Policy Act, and the Occupational and Safety Health Act. The oil and gas industry is like any other industry and we comply to the acts and laws that apply to us.

**Senator Werk** asked if there were some exemptions for the oil and gas industry, within some of these laws. **Mr. Peiserich** replied yes and he would be happy to provide this exemption information to the Committee.

**Mr. Peiserich** commented about how we protect water, both going out or into the well. There is a casing, that has large layers of steel and concrete that goes all the way down to the production zone, ensuring a good solid bond and protection. He further commented they have participated in a State oversight program through the Department of Lands and negotiated rule making passed through legislation with participation with the Idaho Water Resources, Idaho Department of Environment Quality (DEQ), the Idaho Conversation League, the Idaho Water Users Association (IWUA), the counties, and the public. The following steps are taken before a well is ready to begin production: 1) to obtain well treatment permits; 2) test water wells within 1/4 mile of a well head; 3) have inspections from the Department of Lands; and being responsible to the Water Resources Board and DEQ, who will conduct inspections; 4) well bonding; 5) seismic test permits; and 6) other test permits that are required. Well bonding is a risk management technique that has proven reasonable over the course of production in many other states. There is a bond for active (producing) status wells, but also there is an additional bond for an inactive well status. We have surface owner protection through a contractual process, detailed casing requirements, preventive equipment requirements, detailed pit requirements, blow out detail requirements, seismic exploration permits, and bonding requirements. How do we protect Idaho's water? We have some good physical programs such as: 1) well casing; 2) cement bond laws, to run a waterline tool into the casing, and actually take a physical measurement of the bond between metal, the cement and the reservoir, demonstrating a sufficient bond; 3) mechanical integrity testing by pressuring up the well, to show the well can handle the pressures it is intended to function; and 4) pressure monitoring on the back side of the well, to show there are no pressure chambers. We have regulations and requirements that we submit periodically for reporting purposes.

**Mr. Peiserich** commented that the oil and gas industry tries to be good corporate citizens, to work with the cities and counties, and to be proactive.

The next item to talk about is hydraulic fracturing, which is a well stimulating process that is used to maximize fracking for underground resources. Actually, Idaho has a long tradition, despite the fact it is unknown, of hydraulic fracturing relating to the geothermal, water purposes, and oil and gas purposes. **Senator Stennett** asked what were typical depths for Idaho wells. **Mr. Peiserich** replied the shallowest to be productive is typically 1,850 feet. When eight out of 11 wells were drilled, the deepest productive well was typically 4,500 feet. About 2,000 to 4,000 feet is a general rule to drill. There are two types of levels of fields, a drier gas field, which is shallow with low or no production, and the deeper fields seem to have more liquid or higher production. The Environmental Protection Act (EPA) stated that natural gas is a great source of energy. The EPA will not stand by if there are problems with any oil and gas company in the United States. In 2005, during the Policy Act of the Safe Drinking Water Act, the hydraulic fracturing was never intended to be covered. It is not covered by the Safe Drinking Water Act, unless diesel fuel is used as a carrier fluid, then a permit would need to be obtained through the EPA. There are 9 out of 10 wells currently fracked in the United States. There are about 1 million wells that have been hydraulically fractured over the last 60 years. In the New York State American Process Statement (APS) report it was stated that if you have good management at the surface, (the casing, the cementing, and the isolating of the hydrocarbon zones), contaminations will be avoided. What fluids are going into the ground for the most part are 90% of water and 5% to 9% of sand. He further commented that the list of chemicals given to the Committee, briefly explained the uses of these chemicals and the concentration used with each chemical in the oil and gas industry. The industry, to ensure safety first, used the word hazardous, meaning toxic carcinogens or to cause a physical hazard, in which combustible, or water reactive, is the terminology used when reviewing chemicals and components.

**Senator Werk** commented that he understood the presentation being made, but the comparison made by **Mr. Peiserich** in regards to the scientific information provided in regards to human carcinogens, to say the least, is unscientific or inaccurate. He said he finds this information misleading in itself, to minimize the potential threat of carcinogens. He further commented there is a class of components that were going to be highly problematic with super, super low concentration. We need to acknowledge these kinds of components in this presentation. **Senator Tippetts** commented that we invited these folks here to make a presentation for our benefit and information and it is entirely appropriate to ask questions of the presenters, but it doesn't seem appropriate to debate with the presenters, and use the time of the Committee. **Senator Werk** apologized if he offended anyone. **Chairman Pearce** said to proceed with the presentation and to ask questions at the end of presentation. **Mr. Peiserich** replied that he would be happy to discuss the issue of carcinogens and compounds at a later time with **Senator Werk**. **Mr. Peiserich** continued by saying that **Senator Werk** stated that we do need to be reasonable in any discussion regarding issues of carcinogens and components that could be harmful. He further stated the last thing to mention, would be the difference between underground injection for disposal purposes and hydraulic fracturing in well treatments, in general. Underground injection for disposal of fluids is a long-term project over many, many years in a cohabitated facility. As for hydraulic fracturing, it is a very temporary occurrence that happens one or two times in the life of the well, with the goal to open a pressure network to recover fluids from it. The injection process is to inject fluids in the ground. The underground injection is monitored by the Underground Drinking Program of

the Safe Drinking Water Act. **Mr. Peiserich** said there are a wide variety of states that have a state program for Underground Injection Control (UIC). The ultimate goal is the protection of drinking water. In Idaho, we have two separate programs that dictate this process: 1) the Underground Injection Control Program, administered by Idaho Water Resources for disposal purposes; and 2) the Hydraulic Fracturing Program, administered within the Department of Lands with the Idaho Oil and Gas Conservation Commission, where we obtain permits.

**Senator Stennett** asked in which counties does the industry currently have leases in and where are they located. **Mr. Peiserich** replied there have been leases taken in the Bear Lake area, the border along Wyoming, the southern border of Nevada, and the western Idaho basin. **Senator Stennett** asked if we were speaking about the Big U around the state from east to west, the geology would possibly be different near the Wyoming border. Would it be likely to do any fracking that is typical in Wyoming, in this particular area of Idaho. **Mr. Peiserich** replied he didn't have enough details to say one way or the other if fracking would occur in this area. **Senator Stennett** asked if gas and oil were the only smaller by-products that have been discovered in the western Idaho basin area. **Mr. Peiserich** commented that natural gas happens to be under temperature and pressure that comes to the surface. It converts from a gassy phase in a reservoir to a liquid phase at the surface because of the temperature change and pressure. If it is gas in the reservoir, when brought to the surface, part of it condenses which is called condensate and it is not a liquid formation in itself. **Senator Stennett** said if it is natural gas, what could the state expect in production. **Mr. Peiserich** stated that the condensate found here in Idaho, is a really high grade condensate and he said it gets about a 15% bonus above oil prices, because it doesn't have to be highly refined. It is a liquid at the surface, getting the benefits of the \$95 per barrel of oil. Some of the wells have shown, especially in the southern areas, to be able to produce up to \$100 per barrel of oil per day, even without natural gas production. The cost of these wells, compared to the wells in south Texas where the cost is up to \$12 to \$15 million per well to get \$300 to \$400 per barrel of oil, could cost approximately one-tenth to get one-third the liquid fraction plus get condensate. Our economics work well here because of the benefit of having condensate and the benefit of a transition line going through fields. Our infrastructure costs will be relatively low here in Idaho. **Senator Stennett** asked if we were likely to use our own production or would it be sent out and what would be the benefits to Idaho. **Mr. Peiserich** replied that Idaho would be able to use their own production. There are two options: 1) the condensate; and 2) the natural gas. These are the products that can be refined locally, possibly at the Salt Lake City refinery.

**ADJOURNMENT:**

**Chairman Pearce** expressed a thank you to **Mr. Peiserich** for his presentation. He said thank you to the Committee, and the meeting was adjourned at 3:00 P.M.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary



AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:30 P.M.  
Room WW55  
Monday, February 20, 2012

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">S 1256</a>	Fish & Game, bighorn sheep tags, auction	Vice Chairman Bair
<a href="#">S 1305</a>	Control of/depredation of wolves	Senator Siddoway

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell  
Room: WW37  
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MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Monday, February 20, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/  
EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:35 P.M. and welcomed everyone. He asked the committee secretary to take a silent roll call.

**S 1256** **Vice Chairman Bair** commented bill **S 1256** will generate an approximation of \$200,000 revenue for the Fish and Game Department and attract sportsmen to hunt in Idaho. Since 2006, Idaho big game tags had fallen significantly, as follows: a) Non Resident Deer tag sales, 40%, a loss of \$1.3 million; b) Non-Resident Elk tag sales, 37%, a loss of \$1.4 million; and c) Resident Elk tag sales, 7%. Currently in Idaho statute, the Fish and Game Commissioners have the authorization to issue the tags annually, to choose when to issue the tags, and to determine where those tags will be issued.

**Vice Chairman Bair** commented on several key sections and key verbiage of this bill. Each tag will be signed by the Governor of Idaho prior to auction to the public, and be available to either residents or nonresidents of Idaho. Up to 30% of revenue will be allotted for sportsmen access programs, to encourage land owners to have open access for sportsmen to hunt, provide a balance for wildlife habitat projects and wildlife management projects to increase the quantity and quality of big game herds. Idaho currently auctions annually the following tags: 1 mountain sheep and up to 10 wolves. The department has a request for a proposed mechanism in place for choosing which incorporated nonprofit organizations can qualify to sell these tags and to be sold at their discretion. The nonprofit organization can retain up to 5% from the tag proceeds to cover their advertising and administrative costs. This bill states that none of these funds shall be used to purchase or acquire private property, nor shall be used for matching federal funds to purchase private property, and shall not be used to purchase federal or federal retired managed grazing permits.

**TESTIMONY:** **Douglas Sayer**, President and Chairman of the Board, Premier Technology, Inc., represented himself and other sportsmen in Idaho. He said there was a severe reduction of nonresidents coming to Idaho to participate in hunting and to enjoy our resources. Idaho is in competition with other states for this clientele. This type of clientele wants big game trophies, and to experience and have the opportunity to see high quality multiple big game species to hunt. Idaho needs a program that focuses on the quantity and quality of big game. **Mr. Sayer** stated that these kinds of programs of utilizing minimum nonresident tags to design a mechanism to generate resources gives Idaho the opportunity to leverage for additional National Conservation funds. He further commented, that the Fish and Game Department could change its spending habits of conservation funds and line them up with specific projects. These types of tags mentioned in this bill can be a way to attract the kinds of funds to fund specific projects. Every dollar raised through the Fish

and Game Department comes from big game transactions, by selling tags and licenses. Let's make an investment in Idaho by generating revenue and attracting sportsmen clientele.

**Senator Tippetts** asked which wildlife conservation groups were supporting this legislation. **Mr. Sayer** replied they have the support of the Idaho Wild Sheep Organization. **Senator Tippetts** asked if that was the only organization. **Mr. Sayer** stated yes. **Senator Tippetts** asked if it was the intent in the language referring to a moose tag to be mandatory. **Mr. Sayer** replied he believes this is an oversight. **Senator Tippetts** asked how much the auction prices would be for moose, elk and sheep tags. **Mr. Sayer** stated a moose tag has been sold for \$15,000 to \$50,000, an elk tag sold for \$325,000, and a bighorn sheep tag sold for half a million each. The value of tags is based on how the tags are marketed, and what kind of product is attached to them.

**Senator Werk** asked about the two conditions attached to the Idaho Wild Sheep organization's letter, referring to specific species and conditional support. It appears, he said, that the language of **S1256** does not meet these conditions. **Mr. Sayer** replied the intent was to be in sync with the Idaho Wild Sheep organization. The language in the bill still gives the Fish and Game Commissioners and the Fish and Game Department the authorization to apply the funds raised by elk or deer tags to the specific species that raise the revenue and to ensure some flexibility in case of emergency. **Senator Werk** asked if the intent of the language was to adhere to the second addition of the Idaho Wild Sheep language, and in such cases of an emergency situation, for the Fish and Game Department to utilize these funds for a different purpose. **Mr. Sayer** commented that the species generating revenue by the sale of tags, would be preferred. In the past, there was an issue with a species as there had been a disease that affected those animals and the Fish and Game made the decision to utilize funds for this emergency.

**Senator Brackett** asked if the language referring to not transplanting additional big horn sheep into the portion of southwest Idaho, south of the Snake River, and west of Highway No. 93 applied to this new tag program. **Mr. Sayer** replied yes it did apply. **Vice Chairman Bair** commented this language is already in the statute. **Senator Brackett** commented the language seems to apply to the existing tags, and no reference to the new tags. **Mr. Sayer** stated the intent was to capture the new tag verbiage in the new language. **Senator Heider** asked if our state hunters receive Idaho tags to hunt big horn sheep and mountain goats. **Mr. Sayer** replied yes. **Senator Heider** asked if there would be a difference in the number of tags available to the out-of-state hunters and would these tags come from the nonresident allotment. **Mr. Sayer** replied there would be a difference in the number of tags.

**Senator Siddoway** ask what kind of opposition was there to this concept. **Mr. Sayer** replied it was a philosophical opposition. This plan can work, with everyone's participation to assist with the marketing, to make sure the projects are beneficial and to make a difference with our wildlife. The model for the bighorn sheep has worked very well for two decades. **Senator Siddoway** ask how funds would be used to regulate the bighorn sheep population. **Mr. Sayer** replied what we are facing is a chronic wasting disease problems. A developed plan is needed early on geared towards a solution with the bighorn sheep and migrating with other sheep problem. Without a set plan, there could be some misunderstandings between the sportsmen and land owners. In fact, a coalition of all parties, can bring a positive outcome with these issues.

**TESTIMONY:**

The following people testified in **support** of **S 1256**. A copy of their testimony is attached as appropriate. A general discussion ensued with the Committee members regarding support of **S 1256**. **John Watts, Sharon Kiefer**, Fish and Game Department and **Jonathan Oppenheimer**.

**TESTIMONY:** The following people testified in **opposition** to **S 1256**: A general discussion ensued with the Committee members regarding opposition of **S 1256**: **Jim Numby, Grant Simonds, Burk Mantel, John Caywood, and Angela Rossman**, Idaho Wildlife Association.

**MOTION:** **Senator Heider** made a motion, **seconded** by **Senator Siddoway**, for the Committee to recommend a "**do pass**" for **S 1256**. The motion **passed** by a **roll call vote** of 5 ayes by **Senators Cameron, Heider, Siddoway, Vice Chairman Bair and Chairman Pearce** and 4 nays by **Senators Werk, Stennett, Brackett, and Tippetts**. **Vice Chairman Bair** will sponsor **S 1256** on the Senate floor.

**1ST SUBSTITUTE MOTION:** **Senator Brackett** made a motion to send **S 1256** to the 14th amending order. This motion **died** for lack of a second.

**2ND SUBSTITUTE MOTION:** **Senator Werk** made a motion, **seconded** by **Senator Stennett**, to hold **S1256** in committee. The motion **failed** by a **roll call vote** of 4 ayes by **Senators Werk, Stennett, Brackett and Tippetts** and 5 nays by **Senators Cameron, Heider, Siddoway, Vice Chairman Bair and Chairman Pearce**.

The Committee moved to Room WW02, Auditorium, to proceed with **S 1305**. **Chairman Pearce** passed the gavel to **Vice Chairman Bair**.

**S 1305** **Chairman Pearce** read the bill language for **S 1305**. This bill would allow a land owner to protect and to defend their property, livestock and domestic animals due to wolf depredation.

**Senator Siddoway** conducted a presentation with pictures and declared his conflict of interest by Senate Rule 39A. He said he was a sheep rancher, and came from a family of sheep ranchers, and wolf depredation has affected his sheep business detrimentally. On the first of November, there were wolf attacks with the result of the loss to his family of a guard dog and 36 sheep. The wolves that run in packs and usually attack in the early hours of the morning. The wolves kill the guard dogs and then they have open access to kill all the sheep they want. The shepherd hears the wolves killing his sheep and he can shoot in the air and use flashlights to scare the wolves away, but with no success. This predator hides very well within its environment, making it difficult to hunt them. The provision of this bill that seems to excite everyone the most is the use of live bait. There are options referenced in this bill: 1) to build a corral with secure fencing to protect the sheep placed in this area and on the outside of the corral place wolf traps. When the wolves come down, being attracted by the sheep as live bait in the corral, hopefully, one wolf will be trapped, until the entire pack is caught. 2) The other option is for the land owner to stake one of their guard dogs, back 30 to 50 yards, set an electronic call and the guard dog would bark continuously. Then the wolves would come down, like any other hunter sitting in a blind, they would take out the wolf or wolves as they approach the live bait. **Senator Siddoway** said he had no idea that people across the nation would refer to the language in this bill as animal cruelty and that is absolutely not the case. The live bait is happening now with sheep and guard dogs. Wolves leave their fingerprints on its prey just like any other predator animal. This bill is about 300,000 sheep and 2.5 million cattle on the range. Losses to the land owner can be astronomical due to these predators. He commented on the letter from the Attorney General's office, under Idaho code, it is prohibited to kill a wolf for killing livestock and domestic animals. The only tool of success is with a night scope rifle. The Wildlife Services tool to take control of these wolves is with an airplane or a helicopter. This bill has two provisions giving land owners the tools to protect their property, livestock and domestic animals. It is specific in the language that all losses have to be verified. Within the first 36 hours, if there has been a kill on one's property and the loss has been verified, the land owner could pursue the predator, utilizing all the tools mentioned in the bill. After the 36 hours, a

permit would need to be obtained through the local Fish and Game office. That permit would specify geographic areas one can hunt and how many wolves could be taken. Traditionally today, you can obtain these same permits.

**Senator Stennett** asked if hunting for bear was the only live bait reference in this state. **Senator Siddoway** replied yes, that was true. The live bait for bear hunting was in statute. **Senator Stennett** asked that currently to take wolves, was it due to loss of livestock. **Senator Siddoway** replied yes, the losses have to be verified. **Senator Stennett** asked if this bill would allow the land owner to be proactive to kill wolves before the live bait animal was taken. **Senator Siddoway** replied yes, that was correct. **Senator Stennett** asked if this bill was open ended, allowing any predator animal to be taken by the land owner. **Senator Siddoway** commented this is specifically to take action toward wolves. **Senator Stennett** asked if the animals were placed in a secure corral, provided with food and water, and guarded. **Senator Siddoway** replied no. The owner would return everyday to feed and water the animals and check the traps. Usually the guard dog was the first live bait, then the sheep are second. There is nothing to guarantee what animal will set the trap. **Senator Stennett** asked how does one know if one is tracking the wolves that cause harm to their livestock. **Senator Siddoway** stated that the Fish and Game Department would assign an area based on the biologist's directive, to hunt the wolves. If wolves were sighted, then the assumption is that they are the predators that caused the losses. There is no 100% guarantee. **Senator Stennett** asked if there was a conflict with the Federal Hunting Act in reference to aerial hunting. **Senator Siddoway** stated in Idaho Code, the state has ownership of wolves and the Department of Agriculture has the authority to issue the permits to do aerial hunting and there are FFA protocols to follow for aerial hunts.

**Senator Werk** asked was the mechanism in the current law for land owner compensation. **Senator Siddoway** replied, at one time there were three programs in place to provide compensation: a) Defenders of Wildlife program; b) the Farm Service Agency, which compensates for any kind of losses, and; c) the Federal Government, which offers funds to every state. Land owners may apply to be compensated. **Senator Werk** asked, at this point, if there were any current compensation programs available. **Senator Siddoway** commented there was one program for compensation, the Office of Species and Conservation. **Senator Werk** asked if the kind of activity described in this bill fits in the management plan for wolves. **Senator Siddoway** replied, there were provisions and a framework to follow, directed by the Idaho Fish and Game. **Senator Werk** asked why not utilize one tool like the aerial, then ask for several tools and track the impact of this one tool. **Senator Siddoway** commented that aerial hunting is quite expensive and only a few could utilize this tool. The array of tools proposed can be utilized by many land owners and were easier to obtain. A large pack of wolves can kill up to 40 animals in one attack in a very short time span.

**Senator Brackett** asked if the Attorney General's opinion was sought to provide legal guidance relating to the control of wolf depredation specifically for this bill. **Senator Siddoway** replied no. **Senator Brackett** asked what did this bill offer to land owners that they can't do today. **Senator Siddoway** stated the new provisions would allow taking the animals from the air, would allow the right of pursuit, allow the use of live bait, and allow the use of traps. **Senator Brackett** asked if this bill could possibly cause the de-listing of wolves. **Senator Siddoway** commented the Fish and Game Department would have a mechanism in place for the management of the number of wolves that can be taken and hopefully prevent the de-listing of this species. **Senator Brackett** expressed a concern regarding the legal issues of de-listing wolves, and a mechanism for the disposal of them.

**Senator Stennett** asked how could the cruelty to animals issue and the definition of live bait be in conflict with this bill. **Senator Siddoway** replied that at a later time an attachment of a definition of live bait could be presented through the rules process next year, but for now to follow the normal legislative process.

**TESTIMONY:** The following people testified in **support** of **S 1305**, and a copy of their testimony is attached as appropriate. A general discussion ensued with the Committee members in support of **S 1305**: **Larry Orme**, from Squirrel, Idaho; **Harry Soulen**, **Catherine Fehen-Elston**, **Jonathan Oppenheimer**, **Wally Butler**, and **Wyatt Prescott**.

**TESTIMONY:** The following people testified in **opposition** to **S 1305**, and a copy of their testimony is attached as appropriate: **Jim** and **Barb Hagedorn**, Idaho residents; **Lisa Kauffman**, Idaho State Director of the Humane Society; **Ivy Roy**, representing herself; and **Sharon Kiefer**, Department of Fish and Game.

**ADJOURNMENT:** **Vice Chairman Bair** passed the gavel to **Chairman Pearce**. **Chairman Pearce** thanked everyone for their participation and informed the Committee that **S 1305** would be brought to a vote next Wednesday, February 22, 2012. The meeting adjourned at 5:00 P.M.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

**AMENDED #1 AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Wednesday, February 22, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1305</u></a>	Control of/depredation of wolves Committee discussion only - no testimony taken	Senator Siddoway
<a href="#"><u>SJM 103</u></a>	Community forest trust pilot	Senator Keough
<a href="#"><u>SJR 106</u></a>	Rights to hunt, fish, and trap are preserved	Senator Heider
<a href="#"><u>H 446</u></a>	State Parks Passport Program	Director Merrill, IDPR

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce	Sen Heider
Vice Chairman Bair	Sen Tippetts
Sen Cameron	Sen Werk
Sen Siddoway	Sen Stennett
Sen Brackett	

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, February 22, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER** **Chairman Pearce** called the meeting to order at 1:30 P.M. and welcomed Linda Kambeitz, New Attache to the staff. **Chairman Pearce** asked for a motion to approve the minutes for February 8 and 10.

**MOTION:** **Senator Cameron** made the **motion** for approval of the minutes of February 8. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous **voice vote**.

**MOTION:** **Senator Tippetts** made the **motion** for approval of the minutes of February 10. The motion was **seconded** by **Senator Cameron**. The motion **passed** by **unanimous vote**.

**S1305:** **Senator Siddoway** declared a conflict of interest because he said he is a sheep rancher and some of the aspects of this bill could have a direct effect on his operation. He wanted to make sure that it is completely understood by every member of the committee and it is reflected in the journal that this bill is only for people who have suffered losses from wolf depredation. **Senator Siddoway** said depredation could be from livestock, hunting dogs, family pets, horses and this bill gives people the opportunity to utilize the tools that are made available from this bill. He said many of these tools are currently available through Fish & Game right now. He stated the aerial provision of the bill needs to be codified.

**Senator Cameron** asked **Senator Siddoway** to yield to a couple of questions. He asked, "when does the 36-hour clock start or stop on page 3, lines 2 -4? Is it based on when the owner believes there was an attack or when a complaint was lodged with the U. S. Fish & Wildlife Service or the Idaho Fish & Game?"

**Senator Siddoway** said that as soon as it is known when the animal was molested or attacked, the clock would start then. **Senator Cameron** asked that if sheep were attacked and you didn't know about it until two days later, would you have only 24 hours based on the provisions of this bill? **Senator Siddoway** said that it was his interpretation of this bill that if it was after 36 hours after the attack one would need to obtain permits from both the Idaho Department of Agriculture and the Idaho Fish & Game to pursue the animals. **Senator Cameron** asked on line 19 when the bill says, "not withstanding any other provision of Idaho law", what are we attempting to get around?



**Senator Siddoway** said we have had experience when we have tried to protect our animals before, specifically from coyotes and especially at night when artificial light can be utilized. The Fish & Game personnel approached and informed us that we were not allowed to take these types of actions. We felt we have been susceptible to prosecution for protecting our animals. **Senator Siddoway** gave an example of a private citizen who felt his family and livestock were threatened by wolves, who used his vehicle, a snow machine, and ran over the wolves; and prosecution was brought against him. **Senator Siddoway** indicated when this bill was being created, the direction from Legislative Services was to put it all in one spot where it will be crystal clear. Again, the Department of Fish & Game, testified they could use a good number of these tools right now. Practically speaking, when out in the field, and when in pursuit of these animals and the Department personnel views chasing a wolf down with a vehicle or a snow mobile, (and everybody knows it is illegal to shoot from a vehicle or use a vehicle to pursue an animal), then we feel some susceptibility. He stated that is why we want this codified into law that we are no longer susceptible to being prosecuted for utilizing these tools that we deem appropriate to protect livestock.

**Senator Cameron** asked **Senator Siddoway** if he could provide understanding that this bill could create loopholes that a citizen could misinterpret? For example, if a citizen hunting after hours was approached by Fish & Game, could they claim they were participating in wolf depredation after 24 or 36 hours after the kill.

**Senator Siddoway** said only the person who suffered the loss, or his employees or agents, will be able to participate in the wolf depredation within the 24 or 36 hours time limit. **Senator Cameron** asked if anyone who had not suffered a loss could apply these statutes? **Senator Siddoway** answered no.

**Senator Siddoway** gave an example of using his own dog, chaining it, making sure the dog had food and water, and placing himself in a position to be in sight of any approaching predator. Turning on the electronic recording of a wolf call, the dog would join in with the electronic wolf call, making quite a commotion. The pack of wolves would approach the dog, placing the wolves within rifle range. At that time, he said, a rifle could be fired. After a few hours, if the wolves did not arrive, he would go to another location. The dog is well taken care of and is guarded at all times. The other way to utilize the live bait, he said was to load the dog in a truck, take it home, feed and treat it well like any other animal on the ranch.

**Senator Siddoway** commented that he had received numerous emails regarding this bill in regards to animal cruelty laws and the visuals received were unbelievable. He said they have absolutely no idea about what is going on out here nor do they know. **Senator Siddoway** further commented that he couldn't understand the compassion others have for his dog as live bait, being guarded with his rifles; but absolutely no compassion for the guard dogs routinely being killed and mangled to protect our livestock. In the last three years, his family had lost over 18 dogs. There is no compassion for those guard dogs who are paying the full price for protecting our livestock.

**Senator Siddoway** presented another scenario of sheep being used instead of a dog. A pen could be built as big as the meeting room in an oval shape, and two to five sheep could be put in that pen with food and water on a daily basis. On the perimeter of the pen, 10 or 12 traps would be set around the base of that fence. Hopefully, when the wolves came down from the side of that hill, they would come down to that fence. The fence would be from 4 to 6 feet high and since the wolves usually don't jump right in, they usually circle to try to find a hole. While circling around, hopefully, they would step in those traps. That's the other way he envisions how live animals could be used as bait. When the pack of wolves hear the gun

shot, they take off. He stated by using sheep or dogs, no animal would be lost or endangered, the animals would be used only to attract the wolves.

**Senator Cameron** commented he would like to see the language in this bill to be reworded in a different way. He acknowledged an owner of livestock and land should have different tools available to protect their livestock and remove wolves that are harassing or causing harm to their livestock and property. He stated that he has known friends that had gone elk hunting and calling out an elk, found themselves surrounded by wolves. The electronic call method has been used and also fake rabbits to draw in coyotes. **Senator Cameron** further commented that it seemed the most controversial piece of this bill is the live bait issue. **Senator Cameron** asked **Senator Siddoway** why he felt this was a necessary piece of legislation with all of the other tools that are being provided for the land owner or the livestock owner.

**Senator Siddoway** commented that the wolves cause havoc in the middle of the night. He said half of the time they roam within the public lands of the U.S. Forest Service, and these lands are bordered along Idaho and Wyoming. In the lands and mountains by McCall and Sun Valley, the wolves find dense cover and ridges in these areas, giving them easy access to the sheep. A herd of sheep can be scattered by over a half mile by a mile long and one can only see 150-200 head out of a herd of 2,500-2,600. Because wolves are hard to find, live bait is needed.

**Senator Stennett** said she had three parts of this bill that trouble her. First of all, she is afraid that the agreement with the federal government to have wolves hunted and managed by the state will jeopardize the wolf bill and is counter productive. Secondly, going after wolves that have not molested an animal is another step in a direction we have not taken so far. She understands if there is evidence livestock have been attacked that predators can be destroyed. She stated just to randomly lure animals in so that you can diminish their numbers is a whole different term in what we are doing. Thirdly, the use of live bait is not defined as to what live bait means in this bill. She said anyone can torture anything to bring wolves in and she said she thought this was completely inappropriate. **Senator Stennett** thought if this was a little better defined it might become better understood, but at this time she cannot support this bill. She said she felt that allowing for the torture of those creatures to bring other species in is not anything we intended to do here and that disturbs her.

**Chairman Pearce** asked if there was any further debate.

**Senator Siddoway** stated to **Senator Stennett** that he didn't understand why the utilization of live bait came to torture. He asked **Senator Stennett** if the trauma to the live bait animal was considered torture? **Senator Stennett** indicated that she knew this was not his intention, but by allowing an animal to be staked down in a trap or around a trap, to bring predators in so that they could be thinned out or killed for the purpose of saving livestock, does not allow them to be able to defend themselves. In that case, these may not all be wolves. She said she thought they could come upon a live animal that is staked down, who does not have the ability to defend itself and she said she thinks it goes past the threshold of attacking something that happens to be in the area. She stated she felt this did not provide for a level playing field.

**Senator Siddoway** asked **Senator Stennett** if the sheep that were in the corral were the bait or were the sheep that were out grazing the bait? He asked her if she could differentiate between the live bait and the ones who are not the live bait and which has the best chance of survival and the one who has the least chance of survival under the Wolf Act?

**Senator Stennett** said that if there were four sheep in a corral that were adequately protected they probably would stand a better chance of being protected rather than the ones who are outside of the corral. She said we are talking about going to the next level by putting something live and trapped for the purpose of luring another species. She asked what about an individual who puts something live in a trap to lure in a wolf and then is not around to defend the animal that is put there. She stated there were no parameters about how you use or abuse the live bait piece of this bill.

**Senator Tippetts** asked the question, "when is enough, enough"? He stated Idahoans did not want wolves in the first place. He stated that one of the members of the Department of Fish & Game said we may have as many as 1,500 and we have livestock owners who suffer tens of thousands of depredation every year, and people across the state say they don't allow their children to play outside because they have wolves around the house. He further stated he didn't know if this was the perfect solution, but options should be provided to livestock owners to take action against these wolves when they are feeding on their livestock. He said that **Senator Stennett** brought up a valid point that there is a possibility that this could create concerns with the agreement we now have. He said he spent time with **Congressman Simpson** last night and that he brought up this topic and he has his permission to represent his opinion. If this bill passes, it is likely wolves will be re-listed and he does not want that to happen. **Senator Tippetts** said he will support this legislation now because he doesn't want to stall the legislation, but he said he may not support it later on when it gets to the floor for that very reason. He said if this isn't the answer and if we don't want to re-list the wolves and we decide to do something differently, he would be looking for some sort of a solution that would keep the wolves from being re-listed. Some options need to be provided for the livestock owners and the other people of this State, who have, frankly, had enough. He further indicated the livestock owners and other people feel we need to do more than we are currently doing to get this problem under control.

**Chairman Pearce** stated that if these wolves were running in town, there would be an outcry to do something about it. He said this is a long way away from some people's real problems and that rancher's livelihood is being eaten and destroyed. **Chairman Pearce** said that one of the ranchers he knows lost 69 calves this season to wolves and they did not get compensated for all of them either. It was a major loss and ranchers have lost too many. This bill does not do as much as it appears to do and it is not as far-reaching as we think it is and it states simply that some additional tools may be used and there are other areas where changes can be done. He said he will support this bill.

**MOTION:**

**Senator Werk** made a motion to hold **S1305** in Committee until July 1, 2012.

**Senator Stennett** seconded the motion. The following discussion ensued:

**Senator Werk** said he understands there are issues out there. The reason he made this motion was the language, "notwithstanding the provisions of Idaho law" is about as broad of an exemption from Idaho law that he has ever seen in any legislation. The issue associated with live bait, he said, whether the intent is to have individuals that would be engaging in the practice that would be diligent in protecting whatever was being used for live bait, there is nothing in this code that would indicate that we need to be diligent. He said there would be things that would happen that would be rather unfortunate. As well, he said he was very happy that wolves were being de-listed and he felt that was a great victory in our efforts to be able to control the population and work in the future years for adequate management.

He indicated that if the impact of passing this legislation would result in the re-listing of wolves, he could not see this as being worthwhile. He said he would hope the Committee would decide to take a step back so as to not to put the State of Idaho in this type of risky position. Perhaps, he said, that something will come out of the discussion that is easier to evaluate and pass and not run afoul of the Federal issues.

**SUBSTITUTE MOTION:**

**Vice Chairman Bair** made a substitute motion that **S1305** move to the Floor with a "do pass" recommendation and **Senator Heider** seconded.

**ROLL CALL VOTE:**

**Chairman Pearce** asked for a roll call vote. The following voted aye: **Senators Cameron, Brackett, Tippets, Heider, Siddoway, Bair, and Pearce**. The following voted nay: **Senators Werk and Stennett**. The motion **passed** with 7 ayes and 2 nays.

**Chairman Pearce** said this took a lot longer than they had anticipated.

**TESTIMONIES:**

Doug Badger opposes the bill. Loretta Sadler opposes this bill. Don Charney opposes this bill. Janet Hoben opposes this bill. Joan Favazza opposes this bill. Bret Hoverstick opposes this bill. Mary Ann High opposes this bill. Ann DiNucci opposes this bill.

**SJM103:**

**Senator Keough** was asked by **Chairman Pearce** to introduce this bill relating to the Community Forest Trust Pilot. She indicated she and **Chairman Pearce** were the sponsors of this bill. She said the resolution sets out the Concept formulated by the counties of Shoshone, Boundary, Clearwater, Idaho and Valley as a possible alternative for national forest land management and asked that a pilot project to determine the feasibility of the concept be included in a reauthorization of Secure Rural Schools. She introduced **Commissioner John Cantamessa**, from Shoshone County and **Commissioner Dan Dinning** from Boundary County.

**TESTIMONY:**

**Commissioner Dan Dinning** provided a background on the Joint Memorial 103 on the Community Forest Trust. He said in the year of 2000 the Community Secure Rules Schools Community Self-Determination Act was originally set up to keep the counties and school districts of the western states whole with federal receipts, but did not come in due to lack of management in the prior 25% formula. He stated the counties received 70% and the schools received 30%. The counties and schools received 25% of the gross receipts from national forest timber sales. That figure dwindled drastically over the last 30 years. He stated in the year 2000, the federal government said they would pay an anticipated amount. Counties would have time to simultaneously expand their economies, which has not happened.

The Secure Rural Schools Act has now expired and, as **Commissioner Dan Dinning** pointed out, we need to get on a path to balance our national budget and reduce our national deficit. However, without the Secure Rural Schools Act, the consequences to our Idaho counties are dire, leaving no choice but to dramatically reduce services or raise local taxes or both. He further pointed out that it would further stress schools and roads, stifle any new opportunities for economic growth and significantly cause a disadvantage for the existing businesses in our communities. He said we need an alternative that does not rely on federal transfer payments and still supports our local government and communities.

**Commissioner Dinning** said that Idaho counties have developed an alternative to the federal transfer payments, called a Community Forest Trust. The Trust is a proposed partnership with the State Department of Lands to better utilize some federal lands to meet the needs of local communities and county governments.

**TESTIMONY:**

**Commissioner Cantamessa** ; Chair of the Idaho Association of Counties Public Lands Committee, presented the concept of The Community Forest Trust Proposal. He indicated the Community Forest Trust concept had been adopted by formal resolution of the entire Idaho Association of Counties and by many Idaho Chambers of Commerce, businesses, and community groups. He indicated the proposal was for the federal government to designate by law specific federal forest lands in Idaho to be managed in trust, under sustained yield and multiple use principals, for the specific purpose of providing revenues to local county schools and roads, in lieu of federal transfer payments under the SRS Act.

**Commissioner Cantamessa** indicated the lands would remain in federal ownership and be open for hunting and fishing and other recreational activities by all Americans. Management of the natural resources on the Community Forest Trust lands would be by the Idaho Department of Lands professionals under the laws as they currently apply to the management of the Idaho state forest lands. Net revenues generated from the Community Forest Trust lands would be distributed to all Idaho counties in the same proportion they are currently receiving SRS funds and their SRS payment from the federal government would be reduced by a like amount. He further commented the Idaho Department of Lands would deduct their management costs for the Community Forests from the revenues prior to the transfers to counties. Overall management guidance would be provided by a Community Forest Trust Board made up of all commissioners from Idaho counties with federal forests.

**Commissioner Cantamessa** said there was a proposal before the U.S. Congress for a small pilot project of 200,000 acres to prove and refine this concept. He noted that the success of the Community Forest Trust proposal depends on a partnership with the state natural resource management agencies. He thanked the Idaho Congressional delegation, particularly **Representative Labrador**, who has helped advance this concept in the U. S. Congress. He also thanked **Senator Keough** for sponsoring this important Joint Memorial and **Chairman Pearce** and members of the Committee for their consideration.

**Vice Chairman Bair** asked for a clarification on what the Community Trust Pilot Program was for Idaho. **Commissioner Cantamessa** commented this concept was adopted by formal resolution by the entire Idaho Association of Counties, and by many Chambers of Commerce, businesses and community groups. The proposal would be for the Federal Government to designate by law specific forest lands in Idaho to be managed in trust, for the specific purpose of providing revenues for local county schools and roads in lieu of federal transfer payments under the SRS Act. The lands would remain in federal ownership and be open for all Americans at all times for recreational activities. The management of these natural resources on the Community Trust Lands would be by the Idaho Department of Lands professionals, under the laws currently and apply to the management of the Idaho state forest lands. Net revenues generated would be distributed to all Idaho Counties in the same proportion they are currently receiving SRS funds. **Chairman Pearce** commented there are 375,000 acres and he asked if this land is a part of this pilot program. **Commissioner Cantamessa** said they are in cooperation with the Idaho Forest Service to identify the lands which would be suitable for this program and have asked the Department of Lands to assist in this program.

**MOTION:**

**Vice Chairman Bair** made the motion, seconded by **Senator Tippetts** that the Committee send **SJM103** to the Senate floor for recommendation. Motion carried by **voice vote**. **Senator Keough** will be the floor sponsor.

**SJR 106:**

**Chairman Pearce** asked **Senator Heider**, to introduce this bill to the Committee relating to the rights to hunt, fish, and trap as a valued part of the heritage of the State of Idaho. **Senator Heider** suggested the Committee to read along and underline the words "and manage", and "or establish any minimum amount of water in any water body." Originally when this bill was presented, those words were not included. The Attorney General's office suggested we use the words "and manage", in this bill, to make it more clear the fact we would be managing wildlife through the rules, the laws and the proclamations of the State. Previously it was implied, but this language says it in a more firm, supportive manner. The Idaho Water Users Association had a problem with the verbiage as it didn't think it went far enough to protect our water rights. The Association were the ones who added the verbiage "of establish any minimum amount of water in any water body." The Idaho Water User Association supports this bill. He appreciated **Senator Werk** requesting the Attorney General's opinion. In the Attorney's General's report was stated support for this bill. **Stephen P. Holbrook**, an attorney for the **NRA** organization, supports the validity of a fee. He never had been questioned by any state to hunt, fish and trap. **Senator Heider** stated we need to protect this right for everyone. He further commented on the display of a picture of his son with a large fish at Henry's Lake, and the big smile on his son's face. Memories like this one will be forever with his son, he said. This law is about protecting those rights so we can take our children, and our grandchildren and the citizens unborn to have the right to hunt, fish and trap within the great of Idaho. It is a valued heritage for the people of Idaho, through this Constitution Amendment and he said he believed we could preserve it forever.

**TESTIMONY:**

**Sharon Kiefer**, Idaho Department Fish and Game testified the Department believes **SJR106** is strengthened by adding the words "and managed" before "through." She said it creates a break or separation between the State's duty to preserve hunting, fishing and trapping rights and the State's authority to manage those rights through laws, rules and proclamations. This subtle and important change would uphold and enable a successful argument that the amendment does not infringe upon the Fish and Game Commission's traditional authority to take into account factors, such as biological conditions, other than preservation of hunting rights, when establishing Fish and Game regulations and licensure. The Fish and Game Commission, she explained, desires to preserve both the traditions of hunting, fishing and trapping, and the traditional legislative statutory and Commission regulatory powers that are important to providing continued supplies of wildlife.

**MOTION:**

**Vice Chairman Bair** made a motion, **seconded** by **Senator Siddoway**, to send this **SJR106** to the Senate floor with a "**do pass**" recommendation. Motion carried by **voice vote**. **Senator Heider** will be the floor sponsor.

**H446:**

**Chairman Pearce** asked **Director Nancy Merrill**, Idaho Department of Parks and Recreation, to present **H 446** to the Committee. **Ms. Merrill** stated this bill amends Section 49-401B, Idaho Code, to provide that applications for motor vehicle registration shall contain a provision allowing an owner to choose to participate in the Idaho State Parks Passport Program. Fees collected, in addition to vehicle registration fees for the Idaho State Parks Passport Program, as provided in Section 49-402 (11), Idaho Code, shall be separately identified and accounted for and paid to the state treasurer. **Ms. Merrill** further commented that in a new Section 67-4223A, Idaho Code, there is a provision for the Idaho State Parks Passport Program, to provide for fees and that the Department shall not be precluded from continuing to sell certain daily and annual motor vehicle entrance passes.

**TESTIMONIES:**

Mark Young, Meridian, ID supports this bill. Steve Stuebner, author of ten outdoor books, supports this bill. Todd Graeff, Boise, ID, who has many years of working in the parks and recreation field, sees the Idaho State Parks Passport Program as a lifetime for the parks and citizens of Idaho and is in support of this bill. Bill Eastlake, supports this bill and its low cost to purchase this passport.

**MOTION:** **Senator Cameron** made a motion, **seconded** by Senator Heider, to send **H446** to the Senate floor with a "**do pass**." Motion **passed** by **voice vote**. **Senator Cameron** will be the floor sponsor.

**ADJOURNMENT:** **Chairman Pearce** thanked the Committee for the good work today. The meeting adjourned at 2:50 PM.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:00 P.M.  
Room WW55  
Friday, February 24, 2012

SUBJECT	DESCRIPTION	PRESENTER
	<b>NOTE CHANGE OF TIME</b>	
<a href="#">SCR 120</a>	Cocolalla Lake	Chairman Pearce
<a href="#">S1321</a>	F & G, winter/feeding account	Chairman Pearce, Senator Siddoway
	Presentation: Proposed Upper Lochsa Land Exchange	Teresa Trulock, Project Manager Forest Service; Brian Disney West Pacific Timber

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Friday, February 24, 2012

**TIME:** 1:00 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, and Stennett

**ABSENT/ EXCUSED:** Senator Werk

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:00 p.m.

**Chairman Pearce** stated that Juanita was out for an operation on her hand and that there was a card circulating for the committee members to sign. He introduced Linda Kambeitz as Juanita's substitute while she is gone.

**SCR 120:** **Chairman Pearce** presented this Senate Concurrent Resolution, the purpose of which is to reject the application to appropriate water for minimum lake levels relating to Cocolalla Lake in Bonner County. He reminded the Committee we have seen this three times before and we voted in committee to reject it. He stated this will be sent with a motion to the floor. He also said he had letters from the County Commissioners in regards to this subject.

**TESTIMONY:** **Brian Paxton** from the Water Resources Board, said they have no objection to rejecting this SCR and they do not want to move forward in opposition to the local community.

**MOTION:** **Senator Siddoway** made the motion that we send SCR 120 to the floor with a **do pass** recommendation. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

**SCR 1321:** **Chairman Pearce** introduced this Senate bill which would direct funds in the Winter Feeding account to be used only for purchasing blocks, pellets, or hay and requires the Idaho Fish and Game Department to submit a yearly report to the Idaho Senate Resources and Environment Committee and the House Resources and Conservation Committee detailing how funds in the feeding account have been expended. He said we take two dollars and fifty cents from each antelope, elk and deer tag sold as provided and not less than seventy-five cents of each one dollar and fifty cents collected shall be placed in a separate account to be designated as a feeding account. He said in the past these monies have been used for other things because in Idaho there is not an extensive feeding program.

Accordingly, this has been discussed with the Legislature for the past 25 years. This money can only be used for blocks, pellets and hay for winter feeding purposes.

**Chairman Pearce** said the balance of the monies realized from this source, which were not deposited in the feeding account, up to a maximum of two hundred thousand dollars, shall be used for the control of depredation of private property by antelope, elk and deer and control of predators affecting antelope, elk and deer. Any balance in excess of two hundred thousand dollars shall be transferred to the feeding account.

He referred to the sentence on line 13 that the department shall submit a yearly report to the Senate Resources and Conservation Committee and the House Resources and Environment Committee of the Legislature on or before the 31st day of July, detailing how funds in the feeding account have been expended during the preceding fiscal year.

**Chairman Pearce** said this was the essence of the bill and we had a hearing on winter feeding and he indicated he was open for questions.

**Senator Tippetts** asked him if he could explain using the funds for blocks, pellets and hay exclusively, which would preclude using funds for distribution costs and transportation, pick-up trucks and so on.

**Chairman Pearce** said he went to our analysts and to the Fish & Game and asked them how they used this money and they said they could not trace it and they did not know. He said he feels as though we have adequate resources, the public is willing to help, there are hundreds of Fish & Game pick-ups and because of the mild winter we have had it has not been necessary to winter feed. He said like last winter and the previous winter, it was necessary to winter feed. The manpower and resources are there to take care of what is needed.

**Senator Tippetts** said it was his perception that sometimes we have citizens who help with the feeding and it would be his guess that they are reimbursed for their transportation costs. He asked if we would run a risk of maybe reducing the number of programs or preclude some individuals due to the expense they would accrue for transportation costs.

**Chairman Pearce** said he was not aware of this and he has spoken with citizens who have been willing to help and he thought some ranchers might be paid when they have had problems.

**Senator Brackett** asked if there was a shortage of funds for winter feeding or was this a policy issue? **Chairman Pearce** said that \$400,000 has to be kept in this fund and so it has not been used that way and he said this was a policy and a public relations issue. **Senator Brackett** said this was not necessarily a shortage of funds, but more a policy issue rather than a funding issue as to when to feed and what to feed.

**Senator Heider** said that traditionally at JFAC the fund has been historically spent on traveling, snow plowing, employee travel and certain other overhead costs. He asked that what you would like to do is to stop that part of the expense and strictly provide for the hay and blocks and those kinds of things that the money has been spent on?

**Chairman Pearce** stated he could not get the exact information as to where the money was being spent and they could not account for it. He said he didn't think the money was being used for winter feeding completely.

**TESTIMONY:**

**Ms. Sharon Kiefer, Deputy Director, IDFG** said the Committee had a copy of her testimony and she has a detailed recap of the fiscal year 2011 relating to winter feeding. She said the Fish and Game Commission has discussed this bill and they do not support the bill for several reasons. Some of her testimony and handouts are attached to the minutes. She said that currently the money set aside from the sale of tags in this account shall be used for emergency feeding of antelope, deer and elk. The bill severely restricts use of funds for the use only of blocks, pellets and hay and cannot be used any longer for personnel costs, feed troughs, use of vehicles to deliver winter feed, travel reimbursement for volunteers. She also indicated the rehabilitation of the winter range would no longer be available for elk, deer, and antelope. Basically, this bill will decrease the budget by 23%.

She summarized that SB 1321 would limit their ability to offer solutions to land owner concerns while still providing benefit to the wildlife resource.

**Senator Cameron** asked **Ms. Kiefer** if she would go through the 2011 expenditure sheet with the Committee. **Ms. Kiefer** said one of the good things that came out of this was that they found a switch in the Comptroller's office code that they were unaware of that split agricultural supplies into two codes. She further stated one is the code for agricultural supplies for grain and the other is for agricultural supplies for animals and she said that may be where some of the confusion may lie. She said that now they are aware of this, they will begin tracking under two codes and that may be part of the confusion as to not to be able to track. She went over the expenditure categories and the amounts. **Senator Cameron** asked if **Ms. Kiefer** could provide that kind of detail for previous years. **Ms. Kiefer** replied she probably could.

**Senator Cameron** said that as long as he has been here, that has been a problem and that the money was used almost as a "slush fund". Previous directors have used the money in other areas due to budget constraints. He said that what continually has been a problem and has been frustrating for the Legislature is that the Department of Fish and Game has been reluctant to use the dollars that are set aside for winter feeding. He indicated there is a reluctance to use those dollars because the Department would rather use them in other areas. He said the attempt of this bill was to focus the use on what the money was intended for and that was winter feeding.

**Ms. Kiefer** said the current statutes are very explicit.

**Senator Cameron** asked her if she believed that all of the items she read previously would fall within the very specific, strict statutory guidelines? **Ms. Kiefer** said yes.

**Senator Tippetts** asked that once the balance exceeds \$400,000 what can the excess money be used for? **Ms. Kiefer** said there is specific statutory guidance stating the money has to be used for the purposes of winter feeding and for the rehabilitation winter range of antelope, elk and deer.

**Senator Stennett** asked **Ms. Kiefer** when would emergency winter feeding take place. **Ms. Kiefer** referred to her prior presentation. Some of the factors will be based on snow, snow crusting, animal condition, and maximum daily temperature, depending on the region. **Senator Stennett** asked that in a light winter, if one thought the wildlife was faring well, one would not necessarily use that fund unless it was deemed an emergency? **Ms. Kiefer** said that if it is not determined an emergency and the set aside fund was below \$400,000, they would not be doing any winter feeding or any winter range rehabilitation.

**Senator Cameron** said he has trouble with the Department using the money for travel, snow plowing, repairs, and overhead costs. In his opinion, these costs should not be used out of the winter feeding account. He is okay with helping a farmer, as long as the money is being used for winter feeding and winter range rehab.

**Ms. Kiefer** said winter feeding and habitat is not just a winter feeding set-aside account and then there is a broader account and she felt it was an unfortunate naming because things are lumped together, which she said they should improve at their end.

**Senator Cameron** said they are focused on the winter feeding account and the expenditures and he thinks they are asking for justification for their expenditures. He wanted to know how snow plowing benefits our big game populations. **Ms. Kiefer** said the only way Fish and Game can get into feed is to plow.

**Ms. Kiefer** said that due to limited funding declining she was concerned that money would build in the set aside account.

**Senator Pearce** indicated he was a little bit embarrassed because he said he looked like he made something up. He said he stood with a Fish & Game accountant and no one could tell him where the money was being spent and now **Ms. Kiefer** has come in to tell them that there is a code they just discovered. He said he wanted to comment on it now and then leave it. He indicated there was a \$200,000 depredation fund Fish & Game thought we were going to plunder and asked when was the last time that fund even made it to \$200,000. **Ms. Kiefer** said that the annual appropriation of that fund has gone as high as \$250,000, but there is not always that much money in the account. She stated she was unaware of the code split, so that is why they could not backtrack. **Chairman Pearce** asked **Ms. Kiefer** when the account actually had \$200,000 in it—not appropriation— but actual dollars. **Ms. Kiefer** said she would check and get a tracking on that and said it was part of her presentation to the Senators.

**Chairman Pearce** said he would like to close. He said he felt that \$400,000 and whatever may accumulate over time for the specific feeding of deer, elk and antelope be for their preservation. For the times of today, we know the wolves have made a big inroad into the herds. He said we have also heard that Fish & Game is not interested in the winter feeding program because if they had been, all of the equipment they have talked about would have been readily available now and accumulated over the years and it is a matter of saying it is all here and in place and it is not. This money was appropriated many years ago for the specific purpose of feeding the deer, elk and antelope and he said we were sending that message and that if this bill passes we would like to save for drastic winters. When we have a bad winter, deer become poor and die because they are not fed early enough and the money is saved to use in other areas. This bill protects the funds and we want Fish & Game to go ahead and do it.

**Senator Cameron** expressed a concern with lines 38 and 39 of the bill, which was restrictive. He asked if **Chairman Pearce** wanted to make an adjustment to the bill and take it to the amending order and the other choice would be to come back with a different part. He indicated he was a little frustrated with what he heard today and he saw value in allowing some of these funds being used to buy seed or to pay a farmer for using his field and using his hay, so he said he was looking to **Chairman Pearce** for a sign as to where he would prefer to go. Otherwise, he would make a motion.

**MOTION:**

**Senator Cameron** made the motion that S1321 be sent to the amending order. The motion was **seconded** by **Senator Stennett**. **Chairman Pearce** said he would be happy to bring forth an amendment and he said he felt this was an important issue.

**Senator Heider** said he happened to be riding with the Fish & Game officers during the fire in his area and it was amazing to him the concern they had for the deer in the winter months. He said they were arranging for hay and other supplies for feeding and fencing. He said he realizes this was a bigger deal than for providing for blocks, pellets and hay for the deer and elk. He said he thought it would be wise of the Committee to amend this to include other areas other than the winter feeding program. **Senator Tippetts** said he had the same concerns. He said the current language needed more flexibility and he wanted to be able to support this bill.

**Vice Chairman Bair** said we want to be able to change the policy so that Fish & Game would provide more than they are for feeding. He said this bill doesn't address that policy though. All it does is manipulate monies in accounts. His understanding of the bill is the money will simply stack up because we have not changed the policy of winter feeding in this bill. His concern is about the depredation account limiting the amount that can be held in reserve to \$200,000. He said he could not support the bill in the current form.

**Chairman Pearce** said he thought the problem that **Vice Chairman Bair** was addressing was there were two depredation funds and this bill was not the fund that **Vice Chairman Bair** was alluding to, as livestock and crop management was a different thing.

**VOTE:** **Vice Chairman Bair** said the question had been called for and he asked for all those in favor of sending S1321 to the amending order to say "aye". There was one "nay" by **Senator Siddoway**. The motion **carried**.

**PRESENTATION:** **Chairman Pearce** indicated that the Committee had no right to interfere, but the Committee needed to understand what was happening in the natural resource areas in the State of Idaho and this land exchange.

**PROPOSED  
UPPER  
LOCHSA LAND  
EXCHANGE**

**TESTIMONY:** **Teresa Trulock**, Project Manager, Forest Service, said the Forestry Service was approached by Western Pacific Timber to do a land exchange for mostly isolated and small areas in the northern part of the State. She said this would be the second checkerboard land exchange. **Ms. Trulock** said there was an Environmental Impact Study done in November of 2010 and there were five options available. The first option was to take no action. The next option was that she identified approximately 18,000 acres of land for exchange with Western Pacific for 38,000 acres. Forestry felt this was a value-based exchange. The exchange was combined with a partial purchase and Forestry has been trying for the past several years to acquire funds from the Lending Conservation Fund. She said the next alternative was the same combination, but Forestry was hoping to spread the exchange out over the course of three years in an attempt to acquire more purchase money and reduce the federal estate. Public comment has been taken. A copy of her testimony is attached to the minutes.

**Senator Siddoway** asked why there was a land exchange being considered. **Ms. Trulock** said the management of lands in the checkerboard area was difficult and it would be much easier for Forestry not to have that pattern on the ground, not only from that perspective but also from a broader ecological reason. **Chairman Pearce** asked if there was a timeline for this plan? **Ms. Trulock** said they were hoping to finalize the Environmental Impact Statement in November or December. **Chairman Pearce** asked what the major concerns have been in the Impact Statement? **Ms. Trulock** said there was an impact to the County tax base and that the Nez Perce Tribe was concerned about the loss of exercising treaty rights on the Federal lands. There was also a concern over camping, hunting, and recreation access.

**TESTIMONY:** **Brian Disney** of Western Pacific Timber said his company does not own any mills and they contract with locals. They are privately owned and have no forest practice violations.

**TESTIMONY:** **Andy Hawes** of Western Pacific Timber, said he was personally motivated and excited about this land exchange. He felt that this exchange would benefit all of Idahoans and this would promote Idaho in the logging industry. There was a concern in Idaho County, that from their perspective, the County would not be whole. There was a concern about the loss of jobs. The Idaho Commissioners said they didn't like the exchange and they said they wanted to come up with their own proposal and work with local residents and the timber company. Western Pacific Timber wants to work with citizens and they agreed to extend the time process. He reiterated the Lumber Company was very mindful of the concerns of the community. Western Pacific Timber said they were willing to have no developments, no subdivisions and guaranteed public access in perpetuity to the lands. They have asked, in return, to be able to harvest the timber.

**Senator Siddoway** asked **Mr. Hawes** to identify the areas they wanted to swap. A map is attached to the minutes showing the areas. The map was explained by **Mr. Hawes** and **Teresa Trulock**. **Senator Siddoway** asked how did the checkerboard of land happen? **Mr. Hawes** said originally the land was left over from a railroad pact in the 1800s. **Senator Siddoway** asked if any of the exchanges involved tied in with the Department of Lands that are dealing with the relief of the cottage side owners. **Mr. Hawes** said there were some initial talks about how to resolve some of these issues, but those issues faded away.

**TESTIMONY:**

**Ray Peyton**, Director of Save Idaho Forests, testified that he was from a "grass roots" organization of concerned citizens that live on and use the land in question. He said he appreciated that Senators are interested and he felt they should hear an objective view from people and groups who might be opposed to this exchange. He wanted to take exception to what **Mr. Hawes** said because the Feds do not own the land. A Federal agency is in charge of managing the property. He said they don't want to swap public land for land they use for land they don't use. He said this is a huge issue. He said he wants Senators to call Washington, D. C. about the problem. The exchange is a redistribution of wealth. He said he thinks the Western Pacific Timber Company should donate the land to the Forest Service. He stated there is an abundance of public land in Idaho County, which is unique. He also said there have not been any studies done as to how this exchange will impact grazing, the economy, etc.

**Mr. Peyton** asked people who drove three or four hours to attend this hearing to stand up. He said he wanted their voices heard and they are asking for the support of their elected officials. He indicated that the land swap would exchange one checkerboard for another.

**Senator Siddoway** thanked all who came. He said there has been some mitigation that these lands would be left open to public access if he heard that correctly and that would be helpful. He asked **Ray Peyton** if that happens did he still feel there would be restrictions. **Mr. Peyton** said that opposition to this is from about 80-90% of the people he has contacted. He said they discussed the conservation easement and this became part of the debate when there was a large public outcry. He felt the biggest problem was with funding of those easements. Also, he said enforcement would be difficult because if a hunter tried to hunt on private land, land he was used to hunting on, and it was closed due to logging, and the hunter said he had a right to hunt there regardless, the hunter cannot call "911." He stated a civil agreement will not be enforced by the police. The public he has spoken to has no confidence in this land exchange.

**Chairman Pearce** welcomed **Senator Skip Brandt** back to the Committee. He thanked the Committee for listening to the land exchange presentation. He said this was a lose-lose for Idaho County. Forty-thousand acres would be traded out of Idaho County. He said the Forest Service will exchange those lands. He feels he needs to find an alternative and he said the Forest Service and West Pacific Timber agreed to do that in order to keep Idaho County whole. He said lands had to be chosen for exchange without creating any end-holdings and they had to be NIVA sufficient and that is how lands in Idaho County have been chosen. He said there were about 50,000 acres of land that had to be weaned down to an "acre-for-acre" exchange. However, **Senator Brandt** said the Forest Service cannot do an acre-for-acre exchange, but rather, they have to do a value-for-value exchange. This exchange has to be done through our congressional delegation and through Congress and we can make it a win/win. The Clearwater National Forest released their travel management plan, which locked the public out of over 200 miles of trails. Travel management plans for the Nez Perce could be even worse. This opportunity could take the Idaho County lands and put deed restrictions and conservation easements to protect and allow continued access. At the same time it puts timber

close to the few mills that we have. He said this is a huge issue and the clock is ticking. We are being threatened right now. Just across the border in Montana, the Nature Conservancy stepped up and bought most of the land and then deeded the land to the Forest Service, thus removing them from the system and taking them out of the tax base. Idaho County cannot afford this due to a loss of other funding for roads and schools in Idaho County.

**TESTIMONY:**

**Commissioner Smellick** said all of the people in Idaho County agree they all love it there. Idaho County was one of the wealthiest in the State, but not any more. Nine million dollars come from the Feds. They are trying to keep the County whole. The loss of 40,000 acres of timberland would contribute to the loss of jobs and hurt the economy. He said they are looking for a win-win idea. He said they approached Western Pacific Timber and asked them if they would help with the SRS funding offset. They are currently in negotiations. This demonstrates the willingness of the private sector to work with the communities to help offset these problems that we face as communities. This is about keeping Idaho County whole.

**Chairman Pearce** asked if this would start a new Environmental Impact Statement?

**Commissioner Smellick** said he did not think so.

**ADJOURNMENT:** **Chairman Pearce** thanked everyone for coming. The meeting adjourned at 3:00 p.m.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

JOINT  
SENATE RESOURCES & ENVIRONMENT COMMITTEE  
AND  
HOUSE RESOURCES & CONSERVATION COMMITTEE  
1:30 P.M.  
WW02  
Monday, February 27, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Presentation: "Natural Gas—More of the Story"	David Hawk, Energy Analysis and Answers Lynn Dahlberg, Williams Northwest Pipeline Scott Madison, Intermountain Gas Company

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

Linda Kambeitz  
Room: WW37  
Phone: (208) 332-1323  
email: jbudell@senate.idaho.gov



MINUTES  
JOINT MEETING  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**HOUSE RESOURCES & CONSERVATION COMMITTEE**

**DATE:** Monday, February 27, 2012

**TIME:** 1:30 P.M.

**PLACE:** WW02

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippets, Werk, and Stennett

**HOUSE MEMBERS PRESENT:** Chairman Stevenson, Vice Chairman Shepherd, Representative(s) Wood (35), Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Wood (27), Boyle, Hagedorn, Harwood, Vander Woude, Gibbs, Pence, Higgins, and Lacey

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman Pearce** called the meeting to order at 1:30 pm. **Chairman Pearce** said Committee Secretary Juanita is recovering nicely from her surgery.

**PRESENTATION:** Natural Gas-More of the Story. **Chairman Pearce** introduced **Joan Cloonan**, President, Idaho Council on Industry and Environment (ICIE). **Ms. Cloonan** said this is the 23rd Gold Room Workshop. The past topics have been as diverse as recycling, hazardous waste management, access to federal lands and ecosystem management projects. With the recent discovery of natural gas in Southwest Idaho, there have been many discussions on gas drilling and fracking. The presenters are going to focus on infrastructure and policy.

**Chairman Pearce** introduced **David Hawk**, who spoke on natural gas and supply. See attachment #1. **Mr. Hawk** said 226 million barrels of oil is the amount of energy the world uses in a day. Of that amount, 200 million comes from hydrocarbons. The other 26 million barrels a day come from hydro and nuclear; then wind, geothermal and solar. The percent of energy used in the world today that comes from coal, natural gas and liquid hydrocarbs is 88%.

**Mr. Hawk** said the world is currently producing about 85 million barrels of oil a day; the world uses about 83 million barrels a day. Of that 85 million barrels of oil, 6 or 7 million are produced in the US. The United States uses 21-22 trillion cubic feet of gas annually. There is about 62 billion cubic feet used a day; and there is 67-69 billion cubic feet being produced in a day. More natural gas is being produced in the US than ever before. In the winter, more gas is used than produced, so gas is stored in the warmer months for use in the winter. More horizontal wells are being drilled than vertical wells.

**Mr. Hawk** said every shale zone is not the same, the Marcellus shale that is in one county is different geologically from the shale in another county in the same state. The industry must reseed, reforest, re-vegetate, re-cultivate, re-contour and return. There needs to be a scientifically-based strategic plan.

**Chairman Pearce** introduced **Lynn Dahlberg**, of Williams Northwest Pipeline. See attachment #2. **Ms. Dahlberg** said the United States has as much natural gas as Saudi Arabia has oil. There are 8.5 million 18-wheel trucks in the US that burn 2.5 million barrels of oil a day. If they were converted to natural gas and that oil was no longer purchased from OPEC, that would cause a major global change. The gas that is burned in the West comes from one of four basins: Western Canadian Sedimentary Basin, Rockies, San Juan or Permian Basins. The Northwest Pipeline can bring gas to Idaho from either Canada or the Rockies. The US now has enough natural gas to export; however, Democrat Representative Edward Markey of Massachusetts is proposing to bar the Federal Energy Regulatory Commission from approving export facilities until 2025, in order to keep gas prices low in the US. The Republicans would like to export natural gas in order to reduce the trade deficit and make money. The Canadians would like to be the first to put an export facility on the West Coast.

**Ms. Dahlberg** said Idaho has 73 delivery points and 0 receipt points. The demand for natural gas increased in Idaho until 2008, when it declined. There are only two coal-fired power plants in the Northwest and both have plans to convert to natural gas. New pipelines have gained capacity, but at the expense of existing pipelines. On a transmission line, when there is an expansion all ratepayers pay for it. With the pipeline, the party who wants the expansion pays for it. That party must be credit worthy and sign a long-term contract. It takes about three years to get a pipeline built.

**Chairman Pearce** introduced **Scott Madison**, of Intermountain Gas Company. See attachment #3. **Mr. Madison** said Intermountain Gas Company is based only in Idaho and has roughly 312,000 customers. In the past 10 years, about 45% of the supply has come from the Rockies (Wyoming/Utah area) and 55% from Canada. The company is supportive of oil and gas development in Idaho.

**Senator Stennett** asked how many leases there are currently for oil and gas exploration in Idaho. **Mr. Hawk** said there are still some leases held by private companies in Southeastern Idaho and ten-year leases were let a while ago; in total there are probably two hundred leases and the total acreage involved is 150,000-200,000. **Senator Stennett** asked which counties were the leases located. **Mr. Hawk** said Canyon, Washington, Payette, Twin Falls, Bonneville, Bigham, Caribou and Teton counties. **Senator Stennett** asked if the area would go from Teton, down to big Horseshoe towards Payette and Washington counties. **Mr. Hawk** said geologically the areas are not related; the most promising areas in the state of Idaho for hydrocarbons are in the basins that have been delineated.

**Chairman Pearce** asked of 88% of the hydrocarbon fuel used in the US, how much is coal. **Mr. Hawk** said 42% is coal. The usage of coal is dropping as there are facilities converting to natural gas. There is not as much fuel oil and diesel that are being burned for industrial purposes as there once was. Natural gas is being used less because the rust belt is gone. A lot of the major industries that used natural gas have moved offshore. Liquid hydrocarbons are used for transportation and natural gas is used for heat. **Chairman Pearce** asked if there are any known coal deposits in Idaho. **Mr. Hawk** said there has been coal production in Idaho since the late 1800's, but there are not significant quantities. Most of the coal production has been used locally. Idaho does not have a lot of economical coal deposits. **Chairman Pearce** asked what the process was for turning natural gas into liquid and how much expense that would add. **Mr. Hawk** said there are ways to use natural gas other than the way it is intended. One is to use it under low pressure as a flux to provide heat. When you lower the pressure to -60° or -120°, that will turn natural gas into a liquid until you release it. It is not under pressure, but it is frozen. If the interstate trucking fleet is turned into a natural gas fleet, that will save over one million barrels of diesel a day. To take natural gas and turn it into

liquid-like gasoline is a very costly process that has been tried and does work, but there are no big-scale investments.

**Mr. Madison** said at the plant, they lose about a quarter of the volume of natural gas to liquefy it. The disparity of the price of natural gas and oil has made it more likely than in the past. If natural gas is used for transportation, the issue is storage. The auto industry has decided to convert cars to electric rather than natural gas.

**Representative Raybould** said a great deal of the terrain of Idaho has had recent volcanic activity. He asked if there are any gas or oil deposits where there has been volcanic activity. **Mr. Hawk** said the last volcanic activity was 1200 years ago at Craters of the Moon.

**Senator Brackett** said in the opening remarks it was stated the Idaho Office of Energy should be funded. Currently, the geothermal leases contribute to that, but they are not reliable. **Mr. Hawk** said the Office of Energy exists for all of the citizens of Idaho. It is not just for developers of wind or other renewable energy. The Idaho Office of Energy should be funded by a \$2 fee on every electric meter in the state. That would put flesh on the bones of the previous energy plan.

**Representative Harwood** asked if there are already cars made in Detroit that run on liquid natural gas. **Mr. Madison** said the only vehicle that is in production is a Honda Civic, which runs on compressed natural gas, which is different than liquefied natural gas or gasoline made with natural gas. There have been vehicles produced since the 1970's that have run on compressed natural gas. However, the market and infrastructure have not been supportive; there have been technological issues and reliability issues with them. If a conversion kit was used, the warranty from the auto manufacturer was violated.

**Representative Vander Woude** asked when does it become economical to switch from gasoline to natural gas. **Mr. Hawk** said it is a BTU-basis question and that conversion has not been done recently. When you talk about \$5 natural gas vs \$100/barrel of gasoline, there is a 1:20 BTU favorable comparison for natural gas. There would be a difference of \$3 per gallon. **Representative Vander Woude** asked if coal plants would convert or shut down. **Mr. Hawk** said many coal plants are not fully depreciated yet. Rate payers would have to pay and make payments on new conversions. **Mr. Madison** said other plants will be converted as new gas plants come on-line. Newer plants will be converted to meet Federal Laws.

**Senator Siddoway** asked how purchasing decisions are made when there is a choice between Canadian gas or Rocky Mountain gas. Is it purchased by cubic feet or time. **Mr. Madison** said the gas is contracted from both marketers and suppliers over time. It is for a certain period of time, such as six months. **Senator Siddoway** asked if Intermountain Gas hedged those markets. **Mr. Madison** said they hedge a certain portion of the gas. Historically, they have used financial hedges, but right now it is a physical hedge when a price is guaranteed. **Senator Siddoway** said there is a customer base ready to make the conversion, but there needs to be infrastructure. Is there a master plan to devise an infrastructure to support natural gas. **Mr. Hawk** said T. Boone Pickens has a plan and it is a legitimate one that looks at the nation's freeways and examines the greatest consumption by the interstate trucking fleet. **Ms. Dahlberg** said Williams is in the process of converting its fleet to natural gas and they have purchased conversion kits and they are installed. The future will be collaboration; they are talking to airports and sanitation districts.

**Chairman Pearce** turned the gavel over to **Chairman Stevenson**.

**Senator Stennett** said it takes three years to build a pipeline. Access, easements and agreements becomes more and more difficult. She asked if the transmission infrastructure is already in place to deal with growth in the short time. **Ms. Dahlberg** said Northwest Pipeline is fully contracted. The shippers realize how long it will take for infrastructure to be built. There is a vibrant secondary market, where purchases will be made for the future.

The Senate Committee members left the meeting at 2:58 p.m.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

**AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Wednesday, February 29, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H464</u></a>	Updates Idaho's statutes for oil and gas exploration and production.	Representative Stevenson
<a href="#"><u>H379</u></a>	Changes how the oil and gas severance tax is collected by the Oil and Gas Commission and eliminates the redundancy of tax collection and enforcement. Redirects the general fund portion of the State Tax Commission's severance tax to the Oil and Gas Commission.	Bob Brammer, Dept. of Lands
<a href="#"><u>H460</u></a>	Relates to oil and gas wells to require certain notice and permits relating to treating wells for oil and gas and to revise fee provisions relating to permits for drilling and treating wells for oil or gas; and declaring an emergency.	Bob Brammer, Dept. of Lands
<a href="#"><u>H462</u></a>	Relating to PUC regulation; to revise the definition of "pipeline" and to define "gathering lines"; to provide that the term "public utility" shall cover cases relating to certain pipelines and to provide that such pipelines shall be subject to the safety supervision and regulation of the PUC; to provide an exception to certain fee provisions for pipeline corporations and to provide that fees for pipeline corporations shall be calculated to recover the Commission's time and expense devoted to the safety supervision and regulation of each pipeline corporation; and declaring an emergency.	Paul Kjellander, Public Utilities Commission
<a href="#"><u>H463</u></a>	Relating to oil and gas to define terms and to make a technical correction, to revise provisions relating to the authority of the Oil and Gas Conservation Commission.	Bob Brammer, Dept. of Lands
<a href="#"><u>H526</u></a>	Relating to oil and gas to provide that certain violations may be punishable by other like civil penalties and the accrual thereof.	Representative Stevenson

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Wednesday, February 29, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 P. M. He reminded the Committee that this day was oil and gas day. He said they were trying to fit in a lot of bills at this meeting.

**H464:** **Chairman Pearce** introduced **Suzanne Budge** from the Idaho Petroleum Council, as **Representative Stevenson** was unable to be there. This legislation updates Idaho's statutes for oil and gas exploration and production. This legislation amends Chapter 3 of Title 47 (Mines and Mining) governing Oil and Gas Wells, and Chapters 2 and 40 of Title 42 (Irrigation and Drainage - Water Rights and Reclamation). The following changes update this section of the law to align Idaho law with current regulatory standards, protect the citizens of Idaho, and clarify the authority of the Oil and Gas Conservation Commission.

This legislation clarifies existing law as follows: Provides uniformity and consistency in the regulation of oil and gas production throughout the State of Idaho; clarifies the scope of the Idaho Oil and Gas Conservation Commission's authority over oil and gas exploration and production; clarifies the role of local governments in the oversight of the oil and gas industry; provides for mitigation of negative impacts to existing water rights or usable water resources; aligns the definition of injection wells with the federal 2006 Energy Policy Act.

**TESTIMONY:** **Ms. Budge** said this bill was one of six pieces of the puzzle that were involved in updating Idaho's existing oil and gas statute and code as part of bringing Idaho into the best practices of the oil and gas industry.

**Senator Werk** asked if this was an agency bill. **Ms. Budge** said no and she continued with her testimony. She gave a brief overview of the process this bill went through and the background. She said this legislation updated two areas of the statutes, including Chapter 3 of Title 47, which was the mines and mining section of the code governing oil and gas wells and Chapter 2 and Chapter 40 of Title 42, which was the irrigation and drainage section related to water rights and reclamation. She said she felt a compromise was reached that everyone supports. Additionally, the Idaho Department of Water resources worked to clarify the definitions of geothermal. **Ms. Budge** said there was confusion about injection wells. Injection well language that is included in this bill is simply a restatement of what is already in Federal law.

**Senator Cameron** apologized he had not had time to spend with the bill beforehand and he had some questions and concerns. His first question was on the issue of local control. He asked why not utilize the local units of government more in the public hearing process and have a formal role that they might play. He said he had a concern about language on lines 39 and 40 in the bill that removes the Conditional Use Permit (CUP). The CUP, in his opinion, is a very useful tool. He asked why isn't that an appropriate tool that we would want to use here?

**Ms. Budge** said that in the broadest view, she thought we were talking about two different levels of interaction. **Ms. Budge** said at the technical level, if one gets a permit to drill a groundwater well or a geothermal well or contemplate a project such as a mine, one would go to the State level. The reason for that is the State is the proper place to hold that technical expertise on an issue that is that specific in engineering. It would be an undue burden to think every county would be able to have the mining engineer, the petroleum engineer, the kind of technical expertise that the State is able to provide through the Department of Water Resources, the Department of Environmental Quality, and the Department of Lands. She stated IDL is gearing up as part of this process in order to oversee the engineering components.

**Senator Cameron** said he recognized that not all units of government have that kind of expertise. He said that the concern is protecting the public. He asked why wasn't there some middle ground for a public hearing, to utilize the local planning and zoning, to utilize Conditional Use Permits and then still have the State provide that level of expertise and that granting authority.

**Ms. Budge** answered she thought they had actually done what **Senator Cameron** had talked about. She stated this bill provided for a considerable amount of local input through the ordinance process and the public notification process which is provided for in the rules. She also said that when a well is drilled and when the underground resource is known, the option is to drill where the resource is located. An oil and gas well cannot be moved. She said the other components that **Senator Cameron** was talking about have been left in the bill. In general, **Ms. Budge** said that captures the picture.

**Senator Cameron** said he had a couple more questions. **Chairman Pearce** said **Senator Cameron** could go ahead and ask his other two questions. He had a question on page 5 of the bill, Section 47-320, which talked about the use of low temperature geothermal resources for the development of oil and gas wells, shall not be subject to the provisions of this chapter and provisions of that chapter are water rights. Why is it necessary to exempt drilling and what is the justification behind this and to exempt them from obtaining the water right?

**Ms. Budge** said the larger issue in the production of an oil and gas well is they are not looking for a beneficial use from water. They are looking to likely be bringing water out of a zone that may also be producing oil and gas that is warm and, therefore, would qualify under the definition of both low temperature and high temperature geothermal. We are not producing water, so we cannot fall under the definition of geothermal, because that is not what we are doing. Essentially, the water that is coming out of an oil and gas well is waste water and it is not something that would be put to beneficial use.

**Senator Cameron** asked why not draft the bill in such a way that says an "incidental encounter" of that water would be exempt? He said that if someone was drilling a well and they encountered water and they decided they didn't have to apply for a permit, they could use it for beneficial use and they could sell it to someone else. He said he didn't see anywhere this would be prohibited.



**Ms. Budge** said that is not what they are going to be doing and having written this in cooperation with the lawyers and leadership of the Idaho Department of Water and Resources, we got to a point where they agreed as well.

**TESTIMONY:**

**Mike Christian**, Law firm of Martin, Christian, & Davies, said one of his clients is Snake River Oil and Gas and he has also worked with **Ms. Budge** with the Idaho Petroleum Council business. The quick answer to **Senator Cameron's** question is that if somebody incidentally encounters a geothermal resource and tries to make beneficial use of it, the law already covers it. He referred to page 10 of the bill, which had some of the existing language, subsection 10. He stated waste water would not be considered a geothermal resource. If someone who is drilling and comes upon hot water and decides to make some use of the geothermal resource, they would have to go through the permit process.

**Senator Cameron** asked where this was located in the bill. He said that Subsection 2, page 5, exempts them from the water right process. He said he felt the bill was in conflict and this was a huge issue for him.

**Mr. Christian** pointed out the language on page 10 was attempting to cover that situation and this is in the existing code. **Senator Cameron** asked **Mr. Christian** why not make the wording clear in Subsection 2? **Mr. Christian** said that it is already in the statute and they didn't feel the bill needed to say anything more about it.

**Senator Werk** interjected and said he wanted to clarify geothermal resources. He gave an example of encountering water and instead of using it as a geothermal resource, which requires permitting, one decides to extract that water so they could use that water for a fracking process. If there was substantial water, it could be used for a beneficial use for an operation and it does not have anything to do with geothermal whatsoever.

**TESTIMONY:**

**Derrick Baxter**, attorney with the Idaho Department of Water and Resources, said he was there to answer any questions the Committee may have with regards to the legislation. The Oil and Gas Commission came to the department and said they had these concerns. Early on in the process they said they were willing to discuss the concerns and they brought in the Idaho Water User's Association and the Ground Water Pumpers to participate in those discussions and this was the compromise from those discussions.

**Senator Cameron** said it appeared the Water Users and the Ground Water Pumpers were wanting more restrictive language and the oil and gas folks wanted less restrictions and this was the compromise. He asked **Mr. Baxter** if this was a fair assertion. **Mr. Baxter** said this issue went back-and-forth and they decided upon this method to solve the problem. **Senator Cameron** asked **Mr. Baxter**, in his professional legal opinion, are we not putting at risk Idaho water rights by exempting oil and gas from having to apply for a water right if they intend to use the water differently other than an incidental encounter. **Mr. Baxter** said that was correct. We have a process in place to investigate if abuse is suspected.

**Senator Cameron** asked **Mr. Baxter** if he believed that given this language, should an oil and gas company find low temperature geothermal resources and attempt to use them other than incidental encounters, they would have to file a permit or file for a water right, or are they exempt even if they want to use it as wastewater or they want to use it as a replenishing source of water? **Mr. Baxter** said that if they decide to use the water for geothermal then they are no longer using that for oil and gas drilling and they would have to get a permit.

**Senator Cameron** asked **Mr. Baxter** if he felt his department had to investigate and why not make this clear right from the beginning? **Mr. Baxter** said there was adequate protection for water resources.

**Senator Brackett** said he had a concern for blanket exemptions for water users and why weren't there parameters. **Mr. Baxter** said they talked about that and the director felt this was adequate protection. **Senator Brackett** asked that if there was a moratorium, would there be an exemption?

**Senator Werk** said that if a dry well was drilled and water was found, one could use the water for geothermal, but a permit would be needed. If water is encountered while drilling for oil and gas and it is incidental to this quantity of water, then this would then, for example, be used for oil and gas extraction. **Mr. Baxter** replied that **Senator Werk** was correct. **Senator Werk** said that water can always be beneficially used and he had no further questions.

**Senator Stennett** had a question for **Ms. Budge** about local control. **Senator Stennett** wanted to make clear the purpose of the rule was for the state to have the right, the purpose and the correct place to be at the helm as to what was going on in the local areas because of their expertise. She said we have rules and we have been in agreement with them. There was a consortium of people from all sides that came to a conclusion and that we all agreed upon. That is where the technical assistance and the expertise, from what she understands, comes from. She asked if that was correct?

**Ms. Budge** said she thought the regulatory framework should be looked at in whole. The rules were already in place and were close to the model language, but were updated as part of the process. Obviously, the rules draw from the authority under the oil and gas statute. She said it became obvious during the process that the statute needed to be amended as well, which is why the Committee is seeing the four or five bills today. They were given guidance that the statute needed to be very clear.

#### TESTIMONY:

**John Hosrich** from the Idaho Petroleum Council said that some local land use things were already in place. He said the state determines what and where to drill a well. The local control comes into place and tells where a fence should be placed around a well, whether shrubs need to be installed and so on. He indicated that industry and communities work together on land use. He said the local government can dictate through an ordinance what works together with permit issues.

**Senator Stennett** said she felt the words on page 2, line 34 were ambiguous. She wanted to know who was going to determine what is "reasonable local ordinance provisions"?

**Mr. Christian** said it was an issue of fact and if it became a dispute that ended up in litigation it would be what is reasonable. **Senator Stennett** said that on line 41 on page 2, she questioned the 21 days and "upon good causes", by whom? Who determines whether the local entities can have an extension to make an agreement on something? **Mr. Christian** deferred to the Association of Counties.

**Senator Werk** asked for a clarification of placing a well where the resource was located. He thought this could be a Conditional Use Permit issue. He said he thought that, for example, if there was a church where the oil and gas were located, drilling could be moved 100 to 250 feet, as it was his understanding the well does not have to be located directly over the resource. Wells can be drilled to get one where they wanted to go, especially if drilling 2, 3, 4 or 5,000 feet down. Access to the resource then would not be denied. Locals should be given a chance to give input through the CUP.

**Mr. Christian** said the issue of what surface structures are there and other facts similar to that are going to be provided to the Department of Lands and that would be part of their decision-making about where to permit the well. Another thing to take into consideration when talking about directional drilling is that it is more expensive. The depth of where the resource is located, the anticipated size of the resource and those kinds of things are going to come into play and have to be balanced off against the increased expense of engaging in directional drilling.

**Senator Werk** asked for clarification as he said he was hearing **Mr. Christian** say it would then be the state's job to take into account all of the local considerations associated with the siting of the well and that they are taking on the responsibility of being able to voice the concerns of the community regarding the location of the well. He said he also heard **Mr. Christian** say moving the well site by 100 - 200 feet could potentially make it so that a resource could not be reached that was 4,000 feet below the surface. **Mr. Christian** said he agreed the state was taking a lot of responsibility of addressing all of the local concerns and he said he wanted to refer **Senator Werk** back to **Ms. Budge's** discussion of how they view the statute working. He said he did not agree that the state was taking on all of the responsibility and that a spacing regimen was in place. He said by statute the state has its own restrictions it is going to use.

**Senator Werk** said the state could have interests that are counter to the interests of the local community because by statute they have interests they are required to follow. **Mr. Christian** said the state has a statutory mandate to avoid wasting a resource and he would not disagree with that at all. Sometimes state and local interests do not line up.

**Chairman Pearce** commented that time was running out very rapidly and he asked the Committee members to hold their questions as he would like to hear testimony from people who have driven a long way. **Senator Heider** said there were still a lot of questions due to so many contradictions in the wording, and he said we can take as long or as short of period as we would like, and there would be no vote today. **Chairman Pearce** said he wanted to have all of the questions answered, but he wanted to have people testify and that experts could be called upon when needed.

**TESTIMONY:**

The following people testified in **support** of the bill: **Kerry Ellen Elliott** from the Idaho Association of Counties; **Mark Shigeta**, Payette County Commissioner; **Kirk Chandler**, a rancher in Washington County and the Idaho Farm Bureau; and **Larry Lundin** from Midvale, Washington County.

The following people testified in **opposition** to the bill: **Rick Michael**, Washington County Commissioner; and **Mary Sue Roach**, a resident of Washington County.

Copies of their testimony are attached to the minutes as appropriate.

A question and answer session ensued with the various people who were giving testimony from **Senators Cameron, Tippetts**, and **Heider** asking various questions including the use of CUPs, the determining factors of various associations to support this bill, concerns about the lack of input by the counties, and the industry or state dictating the rules and imposing their will upon the people.

**ADJOURNMENT:** **Chairman Pearce** said the meeting had to be continued to Friday, March 2, 2012 at 1:00 p.m. The meeting was **adjourned** at 3:00 p.m.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

**AMENDED AGENDA #1**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:00 P.M.**  
**Room WW55**  
**Friday, March 02, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21452</u></a>	Relating to authorize city irrigation systems to extend into established areas of impact for the delivery of irrigation water.	Norman M. Semanko
<a href="#"><u>RS21454</u></a>	Relating to clarification of the exemption for irrigation and drainage systems from local flood plain regulation	Norman M. Semanko
CONTINUATION OF HEARING H464, H379, H460, H462, H463, H526	Relating to Oil & Gas (see Agenda for February 29, 2012 for description)	
<a href="#"><u>S1271</u></a> LANDS DEPT. GRAZING LEASES	This proposed legislation will amend Idaho Code 58-3 by adding a new section, Idaho Code 58-302, that requires applicants for state grazing leases to submit a grazing management proposal as part of their application. The proposal allows the Department to conduct a preliminary analysis of whether or not an applicant's proposed use is consistent with the Department's resource objectives and management expectations for the lands applied for. The grazing proposal when approved by the Department then becomes the grazing management plan for that lease.	Senator Bert Brackett
<a href="#"><u>S1282</u></a> SPECIAL INCENTIVE HUNTING TAGS	This legislation would provide sportsmen access to private land in exchange for the ability of landowners to sell special landowner tags. The legislation would change public policy, which the Fish and Game Commission would establish by rule, a program to provide special tags to hunt antelope, elk or deer in designated units. To be awarded a tag, the private landowner would allow hunters reasonable access.	Senator Bert Brackett

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Friday, March 02, 2012

**TIME:** 1:00 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**RS 21452 AND RS 21454** **RS 21452** relating to authorize city irrigation systems to extend into established areas of impact for the delivery of irrigation water and **RS 21454** relating to clarification of the exemption for irrigation and drainage systems from local flood plain regulation was presented by **Norman M. Semanko** for the Idaho Water Users Association.

**MOTION:** **Vice Chairman Bair** made a unanimous request that **RS21452**, authorizing city irrigation systems to extend into established areas of impact for the delivery of irrigation water and **RS 21454** clarifying the exemption for irrigation and drainage systems from local flood plain regulation, be sent to print to the State Affairs Committee and be referred back to the Senate Resources & Environment Committee for further action. There were **no objections**.

**CONTINUATION OF HEARING OF H 464:** This hearing was relating to oil and gas and was continued from the meeting of February 29, 2012.

**TESTIMONY:** The following people testified in **support** of H464: Kit Kamo (letter from Ed & Ruth Raney), Marge Chipman, Tony Poinelli, Idaho Association of Counties; Dave Hawk, Richard Brown, Gary Chipman, Brad Roberts, Rod Walter, and Suzanne Budge.

**TESTIMONY:** The following people testified in **opposition** to H464: Lee Halper, Pattie Young, Stan Weikal, Tony Edmondson, Jeri Soulier, Dennis Cooper, Gayle Poorman, Tina Fisher, John Trail, Amanda Buchanan, Justin Hayes, Bob Barber, Della Johnson, Victor Hill, George Soulier, Reed Mulkey, and Wendy Green. Copies of their testimony are attached where appropriate.

**TESTIMONY:** Various questions were asked by **Senators Werk, Cameron, Tippetts, Stennett, Vice Chairman Bair, Heider, and Chairman Pearce** relating to drilling, the use of groundwater, Conditional Use Permits, waiting periods, injection wells related to fracking, pollution, hazardous materials, permits, the rights of property owners and alignment with Federal law. The following people answered questions, in addition to those testifying: **Justin Hayes**, Idaho Conservation League; **Norm Semanko**, Idaho Water Users' Association; **Garrick Baxter**, Department of Water Resources; **Michael Christian**, Attorney with the law firm of Martin, Christian, Davies; **Suzanne Budge** from the Idaho Petroleum Council; and **David Hawk**, retired Director of Energy Natural Resources on the corporate staff of the J. R. Simplot Company in Boise, ID.

**Senator Cameron** questioned **Mr. Christian** about the verbiage of the Federal law section in the bill. He stated he did not understand why the wording did not mirror federal law because he was told in meetings that the wording was Federal law. **Mr. Christian** reported the wording reflected Federal law. **Senator Cameron** felt there was a problem with the potential interpretation and he suggested wording be added because he felt there was a potential for a loophole. **Mr. Christian** pointed out that by adding verbiage, he would run the risk about making the law more unclear and the language does what it is supposed to do.

**Suzanne Budge** summarized the information and urged the Committee to pass H464. She stated the passage would benefit Idaho and provide financial assistance to the schools. She pointed out the biggest issue was how to move our economy forward. She indicated the oil and gas industry was not asking for any assistance from the State except for regulatory certainty.

**MOTION:**

**Senator Tippetts** made a motion, seconded by **Senator Siddoway** that H464 be sent to the Senate floor with a "do pass."

A discussion ensued with **Senator Tippetts** commenting that he had concerns about injection wells, but those concerns had been answered. He said the language was helpful and clarified the use of injection wells. He further stated that we don't want injection wells for hazardous waste and that this bill would not make both proponents and opponents happy. **Senator Tippetts** said the drilling process was a short one. He said he thought government could regulate how and what the well looked like. He said he thought we had reached the right balance and that this was an appropriate first start.

**Senator Heider** said he, too, had questions and concerns, but since then he had spent time with organizations that were in support of the bill, which helped him understand the bill. **Senator Siddoway** said he had a concern about a real misinterpretation of the bill, but he noted that on page 5, the paragraph was there to protect the water rights and that this was not a creation of a new water right. He noted that the IWDR would get a complaint if there was abuse and they would investigate. He said the bill had been put together with a collaborative process.

**Senator Cameron** said he pleaded with his colleagues to reconsider their position. He said he supported the oil and gas industry and he wanted to support the development of oil and gas, but he wanted to do it in a reasonable, responsible manner. He did not want to provide loopholes, nor make life more difficult for them, but he wanted to protect our citizens. He also said he has a good relationship with **Ms. Budge** and he very seldom was on the opposite side of the issue with her. She stated in her comments that they were not asking for assistance, which was true, but they were asking for our assistance in setting aside or minimizing public input and minimizing local government input. **Senator Cameron** said he handed out a copy of a letter from his Jerome County Commissioners that he received in opposition and they are his current county commissioners, that he unfortunately will lose in the redistricting; however, the new county he picked up, also wrote a letter in opposition. Two out of the three counties that he represents have written letters of opposition. He said he had the opportunity to visit with both proponents and opponents, the Association of Counties and the Idaho Association of Cities, and while they are here and we went in detail over their letter, he said he thought it was fair to say that this isn't exactly how they would have it drafted if they had their way. He stated that what was odd to him in this process was that on one hand, the industry was unwilling to budge on even modest, minimal, adjustments. There is nothing proposed that is prohibiting the industry from moving forward, nothing proposed that is making it more difficult. He stated the industry seems to be unwilling, on one hand, and on the other hand, he has had folks say they can run bills next year, if you will just let this one go through, we'll fix it next year. He said the time to fix it was now. He asked why the resistance? **Senator Cameron**

said if you read from Subsection (9) down regarding injection wells, he didn't get the problem with that language either. But, when one reads from 36 down and recognizes that the language of sub 8 is the federal code and it excludes those items, then what are we trying to accomplish by repeating it in (d). It doesn't mirror and it creates a loophole. He said it provides an opportunity, whether intended to be used or not, and he thought it could be clearer. He said they were explicitly told this was federal language, but that reflection then was not accurate. He said his counterpart in the House, who carried this bill on the floor, indicated on the floor several times, as was told that it was federal law and it is not. So, it makes him wonder, if we are unwilling to even give the most modest of adjustments and we are loose with the facts on page 7, what are we missing? What is the fear?

**Senator Cameron** said yesterday in a meeting, **Director Schultz** with the Department of Lands, said he was illustrating the Department of Lands role and **Director Schultz** laid a piece of paper upside down on the table and said, "**Senator Cameron** you don't understand what our role is going to be, you don't understand how we are going to provide the siting". He said we are going to site by section, so this piece of paper represents the section. **Mr. Schultz** said they were going to site by section. **Senator Cameron** said he is asking the Committee members what is going to determine where that well is going to be located. The language in the bill essentially says nobody. So if the Department of Lands gets permission for oil and gas drilling to take place in that section, they can locate it wherever they want, regardless of whether it is at the front steps of the Capitol Building or if it is next to a school, next to my house, next to your neighbor's house, they will have that ability. **Mr. Schultz** went on to explain that the surface right is subservient to the mineral right underneath the ground.

**Senator Cameron** said he believes the best government is the government that is closest to the people and that is a fundamental principle that all of us have espoused for some time. He said he believes in local control and he trusts in his local units of government and he trusts in their process. He said he felt the state government should have a role in permitting in that section, but the local unit of government should have the right through the Conditional Use Permit process to help determine where the best location of that well should be placed.

**Senator Cameron** said the Committee had three choices: 1) put this decision off holding this bill for a week to force the parties to come to some modest agreeable changes; 2) send the bill to the 14th order and draft some modest, agreeable changes; or 3) we could end up with a floor fight over it. **Senator Cameron** said he was not wanting the latter, which he felt was counterproductive for all of them.

**SUBSTITUTE  
MOTION:**

**Senator Cameron** made a substitute motion to send H464 to the floor to the 14th order for amendment and **Senator Stennett** seconded.

**Senator Tippetts** said he did not want to remove the language from the top of page 7 regarding injection wells because he said he thought it needed to be there and that he opposed the motion. **Senator Brackett** said that at the hearing on Wednesday, he expressed a concern about what appeared to be a blanket exemption for the oil and gas company to drill in critical ground water areas that are under a moratorium for further drilling. He said he has come to realize the fact that because there is a moratorium in the area is reason enough for the director to initiate a contested case, but the burden of proof is on the company to establish that it will not cause and is not causing significant negative impact. He said his primary concerns have been satisfied and he would be supporting the original motion



**Chairman Pearce** asked **Senator Cameron** that he alluded to some areas and issues but some of things he talked about and targeted were already in the rules and were passed unanimously by this Committee earlier. **Senator Pearce** asked him to identify specifically what he wanted to amend. **Senator Pearce** said he knew that **Senator Cameron** didn't like page 7, the injection well, but what is the other area that is hurting the issue? **Senator Cameron** said he thought page 7 could be made clearer, but it was not a big issue. He said he had issues with page 5, but with **Mr. Semanko's** testimony, that has helped him feel more comfortable with that language, but, what still remains uncomfortable for him is the process and involvement of local units of government and the process and the time frame. Local units of government have the opportunity to make modest adjustments. He said the Conditional Use Permit was a way to get the counties and cities and local units of government, and that he did not want to extend the time period too much due to the fact that some entities did not meet as often as others. He said he would love to see the counties or local units of government have a public hearing process by which they would make recommendations and suggestions to the Department of Lands. He said he thought that was reasonable, it is not objectionary, it does not create a problem and that is his most fundamental issue and concern. **Senator Heider** said he shared the same concerns as **Senator Cameron**, but there were people who came into his office from the Association of Idaho Cities and the Idaho Association of Counties and others who supported the issue, he found it hard to contradict them when it comes to control when they have greater minds than he did. He said they understand how it fits into mining and mineral rights and how these are rights guaranteed to the state and he said he didn't know how we could intercede and make it have more local control, knowing that these issues and these concepts have already been vetted by the greatest minds in our state. He said he turned to those people whom he respects and values their judgment. **Senator Cameron** said **Senator Heider** was correct and that he felt there would be support if given more time for an application and a Conditional Use Permit was used. He stated that he visited with **Ken Harward** today and he had a conversation with the AIC yesterday. **Senator Cameron** said both of them indicated they would be absolutely supportive of giving additional time and giving the ability to use the Conditional Use Permit as well as public hearings that was his impression. He said he thought they could live with this language, but that the language could certainly be much better and could certainly allow for added protections. Obviously, that is from the hierarchy of those associations, from the local units of government, from the folks from whom we have heard testimony today, the letter he shared with the Committee today. Some of the county commissioners and city council members that are on the ground, they are very concerned with this language. He stated that counties feel the State is usurping their authority and their responsibility. He said he wanted to remind the Committee that the local units of government know their area best. By passing this bill, we are making it easier to locate an oil and gas well than we are for any other industry. We are making it easier to put an oil well in Boise, Idaho than we are allowing Micron to build a new building. In his opinion, **Senator Cameron** said we cannot strip away that public ability and that CUP. To him, that is what is fundamentally flawed in this version.

**Vice Chairman Bair** read the sentences on page 2, line 5 and said this is already in the statute and it has been there for years and years relating to jurisdiction and authority over all persons and property, both public and private, necessary to enforce the provisions of this act and delegation of authority conferred upon the commission. He said the state already has complete, total authority over gas and oil. **Vice Chairman Bair** said that line 19 was relating to mitigation and he said the authority was given to the County. He said that leaves them with the argument as to how much authority the commissioners and local authority should have and he found the bill reasonable. He further stated he felt there were some things the state has responsibility for and has to take care of and that have to be regulated and controlled. **Senator Werk** said we had a great opportunity to see some economic development in this State. He said there were enough questions and enough ambiguity that we only get this opportunity once. He stated he hoped the oil and gas industry will be big in Idaho. He wanted to make alterations and urged everyone to send the bill to the amending order.

**ROLL CALL  
VOTE:**

**Chairman Pearce** asked for a roll call vote on the substitute motion of sending H464 to the floor for the 14th order. **Ayes: Senator Werk, Senator Stennett and Senator Cameron. Nays: Senator Brackett, Senator Tippets, Senator Heider, Senator Siddoway, Vice Chairman Bair, and Chairman Pearce.** The motion **failed** with 3 ayes and 6 nays.

**ROLL CALL  
VOTE:**

**Chairman Pearce** asked for a roll call vote on the motion of sending H464 to the Senate floor with a "do pass". **Ayes: Senator Brackett, Senator Tippets, Senator Heider, Senator Siddoway, Vice Chairman Bair, and Chairman Pearce. Nays: Senator Werk, Senator Stennett, and Senator Cameron.** The motion **passed** with 6 ayes and 3 nays. **Senator Tippets** will carry the bill.

**CONTINUATION  
OF HEARING  
H462:**

Relating to Oil and Gas was continued from February 29, 2012.

**PRESENTATION:**

**Paul Kjellander** from the Public Utilities Commission testified about gathering lines. The purpose of this legislation is to fill a gap in the safety jurisdiction over "gathering lines" in Idaho by providing such jurisdiction to the PUC. Gathering lines are pipelines and other fixtures used to transport, deliver, or distribute natural gas or crude oil from a well-head to ultimately a transmission line or mainline. As the natural gas fields in Idaho are developed, it was discovered that no local, state or federal agency had safety jurisdiction over gathering lines. The federal Pipeline Hazardous Material Safety Administration (PHMSA) does not exert safety jurisdiction over gathering lines until gas is delivered to the interstate pipeline system. And, although the PUC has authority to regulate natural gas utilities, such regulation arises only where the natural gas is delivered and sold "to the public"; with gathering lines, gas may be sold or delivered to a single entity. The PUC currently has two federally-certified pipeline safety inspectors. The PUC laws already adopted the industry safety standards for pipeline constructions, operation, and maintenance.

**MOTION:**

**Senator Cameron** made a motion, seconded by **Senator Werk**, that H462 be sent to the floor with a "do pass" recommendation. The motion **passed** unanimously by a voice vote. **Chairman Pearce** will carry the bill.

**CONTINUATION OF HEARING H379:** Relating to Oil and Gas was continued from February 29, 2012.

**PRESENTATION:** **Tom Schultz**, Department of Lands, presented on behalf of Bob Brammer. The oil and gas severance tax collected by the Oil and Gas Commission must currently be collected and audited separately from the similar tax collected by the State Tax Commission. Furthermore, the current amount of the tax allocated to the Oil and Gas Commission will not be sufficient to cover the administrative expenses of the oil and gas program. Several portions of §47-330 through 332 also contain outdated language and processes that the State Tax Commission no longer uses, and these sections contain many redundancies. The changes will allow the State Tax Commission to collect both portions of the severance tax and eliminate the redundancy of tax collection and enforcement duties. It will also redirect the general fund portion of the State Tax Commission's severance tax to the Oil and Gas Commission. The intent is to fund the oil and gas program exclusively from dedicated funds generated by production and permit fees. Excess funds would be transferred to the general fund. The changes also bring this statute into conformance with the current standards of the Tax Commission and simplify the tax code. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect beginning the first calendar quarter after its passage and approval. A discussion ensued with **Senator Werk** and **Senator Brackett** with **Mr. Schultz** regarding the distribution of funding. Oil and Gas Severance Taxes State Comparisons and the Oil and Gas Program Funding Model are attached to the minutes.

**MOTION:** **Senator Siddoway** made a **motion**, and **Senator Cameron** seconded that H379 be sent to the floor with a "**do pass**" recommendation. The motion **passed** unanimously by a voice vote. **Chairman Pearce** will carry the bill.

**CONTINUATION OF HEARING H460:** Relating to Oil and Gas was continued from February 29, 2012.

**PRESENTATION:** **Tom Schultz**, Department of Lands, presented on behalf of Bob Brammer. The proposed legislation will amend Idaho Code §47-320, which covers drill permit application fees submitted to the Oil and Gas Conservation Commission. Currently, the fee amount is \$100. This amount is not sufficient to cover the costs of reviewing and administering these permits. A fee increase is necessary for the program to become self-sufficient and reduce the burden on the general fund. Fees would be placed into an existing dedicated account for the use of the Commission.

**Senator Werk** asked **Mr. Schultz** if the fee was directly related to the processing of the application for wells. **Mr. Schultz** said the processing application was for the field staff to inspect the permits, production, and would have a positive effect on the general fund by reducing the burden of general tax dollars required to administer the program.

**MOTION:** **Senator Siddoway** made a **motion**, **seconded** by **Senator Heider** that H460 be sent to the floor with a "**do pass**" recommendation. The motion **passed** by a unanimous voice vote. **Senator Heider** will carry the bill.

**CONTINUATION** Relating to Oil and Gas was continued from February 29, 2012.  
**OF HEARING**  
**H463:**

**PRESENTATION:** **Tom Schultz**, Department of Lands, presented on behalf of **Bob Brammer**. The definitions provided in statute are not listed alphabetically and some definitions need revision so they are more consistent with current industry standards. The confidentiality of oil and gas well logs currently has no time limit. Changing the confidentiality limitation to one year allows other oil and gas operators to access recent well log data. These changes are consistent with the standards of other states, and will foster, encourage, and promote the development and production of oil and gas as described in Idaho Code §47-315. Lastly, the enforcement provisions of the Commission are outdated and do not have sufficient authority to effectively conserve oil and gas, protect corrective rights, and prevent the pollution of fresh water supplies. **Chairman Pearce** asked if the industry was happy with the change of confidentiality rules. **Mr. Schultz** replied that the industry standard of one year was reasonable and he was not aware of any opposition.

A discussion ensued relating to the release and wasting of resources with **Senator Werk** and **Mr. Schultz**. **Senator Werk** wanted his conversation listed for the record. For the record, **Senator Werk** said because this section of the code does say, "but not limited to", he believes there may be a case where the state could collect severance tax on that was due and owed on that wasted resource.

**MOTION:** **Senator Heider** made a motion, seconded by **Senator Siddoway** that H463 be sent to the floor with a "do pass" recommendation. The motion passed by a voice vote. **Senator Werk** will carry the bill.

**CONTINUATION** Relating to Oil and Gas was continued from February 29, 2012.  
**OF HEARING**  
**H526:**

**PRESENTATION:** **Steve Thomas**, Chevron, stated this legislation is a trailer to H463, clarifying the time when a civil penalty starts to run if Idaho Section §47-325 is violated, and that for a person to be criminally liable for violating Idaho Code Section §47-325, the person must have acted knowingly. He indicated that Halliburton supports this bill and this would be good public policy for Idaho. As far as he knew, there were no objections to this bill.

A discussion ensued with **Senator Tippetts** who asked for an outline of the bottom of page 1. **Mr. Thomas** said there was always a risk of someone violating the law, but there were "lots of eyes" if there is a perceived violation. **Senator Stennett** asked why there was not a parameter of time given for civil penalties and what the typical time frame was. **Mr. Thomas** said they were aware of the issue and **Senator Stennett** commented that an entity could continue to operate even though they were in violation and she thought the language was a little loose.

**TESTIMONY:** **Mr. Tom Schultz**, Department of Lands, said they could shut someone down immediately and investigate. He said this had to do with a violation and the accrual of penalties. **Senator Werk** questioned the lack of the accrual of penalties until the hearing. **Mr. Schultz** said the intent was a due process issue. **Senator Werk** commented that if there was not an accrual of penalties, there was no hammer to stop the violation. He asked when rules are violated, unlined pits, for example, does this tie the hands of DEQ and is the Oil and Gas Commission the only authority? He said he could not support this bill because of accruing a fine as the violation continued was being given up.

**MOTION:** **Senator Heider** made a motion, **seconded** by **Senator Brackett** that H526 be sent to the floor with a "**do pass**" recommendation.

**SUBSTITUTE MOTION:** **Senator Werk** made a **substitute motion**, **seconded** by **Senator Stennett** that the Committee hold H526 in Committee.

**ROLL CALL VOTE:** **Chairman Pearce** asked for a roll call vote on the **substitute motion**. **Nay** votes: **Senator Cameron, Senator Brackett, Senator Tippets, Senator Heider, Senator Siddoway, Vice Chairman Bair and Chairman Pearce**. **Aye** votes: **Senator Werk** and **Senator Stennett**. The substitute motion **failed** to carry with 7 nays and 2 ayes.

**ROLL CALL VOTE:** **Chairman Pearce** asked for a roll call vote on the motion that H526 be sent to the floor with a "**do pass**" recommendation. **Aye** votes: **Senator Cameron, Senator Brackett, Senator Tippets, Senator Heider, Senator Siddoway, Vice Chairman Bair, and Chairman Pearce**. **Nay** votes: **Senator Werk** and **Senator Stennett**. The motion **passed** with 7 ayes and 2 nays. **Senator Siddoway** will carry the bill.

**ADJOURNMENT:** **Chairman Pearce** wanted to continue the hearing, but **Senator Cameron** objected because of other commitments. **Bills S1271 and 1282** were **continued** to the next meeting on Monday, March 5, 2012. The meeting was **adjourned** at 5:30 p.m.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

**AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Monday, March 05, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
CONTINUATION OF S1271 LANDS DEPT. GRAZING LEASES	This proposed legislation will amend Idaho Code 58-3 by adding a new section, Idaho Code 58-302, that requires applicants for state grazing leases to submit a grazing management proposal as part of their application. The proposal allows the Department to conduct a preliminary analysis of whether or not an applicant's proposed use is consistent with the Department's resource objectives and management expectations for the lands applied for. The grazing proposal when approved by the Department then becomes the grazing management plan for that lease.	Senator Bert Brackett
CONTINUATION OF S1282 SPECIAL INCENTIVE HUNTING TAGS	This legislation would provide sportsmen access to private land in exchange for the ability of landowners to sell special landowner tags. The legislation would change public policy, which the Fish and Game Commission would establish by rule, a program to provide special tags to hunt antelope, elk or deer in designated units. To be awarded a tag, the private landowner would allow hunters reasonable access.	Senator Bert Brackett
MINUTES APPROVAL	February 22, 2012	Senator Heider
<a href="#">H457</a>	Relating to Fish & Game: Designation of Hunting Tags and Controlled Hunt Permits to Certain Minor Children or Grandchildren	Sharon Kiefer Department of Fish & Game
<a href="#">H459</a>	Relating to Fish & Game: to Provide for Nonresident Hunting With Three Day Fishing Licenses	Sharon Kiefer Department of Fish & Game
<a href="#">H461</a>	Relating to Fish & Game: to Provide that Qualified Organizations that Certify Disabled Military Veterans Eligible in Regard to Issuance of Free Big Game Permits or Tags	Representative Jim Patrick

[H525](#)

Relating to Game Tags

Representative  
George E. Eskridge  
Representative Eric R.  
Anderson  
Senator Shawn  
Keough

[H543](#)

Relating to Fish & Game: to Revise Provisions  
Relating to Children with Firearms for Hunting

Representative Marc  
Gibbs

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

Linda Kambeitz  
Room: WW37  
Phone: (208) 332-1323  
email: sres@senate.idaho.gov

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, March 05, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** The meeting was called to order by Chairman Pearce at 1:30 p.m.

**APPROVAL OF MINUTES:** **Senator Heider** made a motion, **seconded** by **Vice Chairman Bair** to approve the minutes of February 22, 2012. The motion **passed** by a unanimous **voice vote**. **Vice Chairman Bair** made a motion, **seconded** by **Senator Siddoway** to approve the minutes of February 24, 2012. The motion **passed** by a unanimous **voice vote**.

**CONTINUATION OF S1271 LANDS DEPT. GRAZING LEASES:** This item was continued from the meeting of March 2, 2012. This proposed legislation will amend Idaho Code 58-302, that requires applicants for state grazing leases to submit a grazing management proposal as part of their application. The proposal allows the Department to conduct a preliminary analysis of whether or not an applicant's proposed use is consistent with the Department's resource objectives and management expectations for the lands applied for. The grazing proposal, when approved by the Department, then becomes the grazing management plan for that lease.

**PRESENTATION:** **Senator Brackett** said he wanted to declare a possible conflict of interest under Senate Rule 39H because he has a state land lease and he has ownership interest in a ranching operation that has state land leases. **Senator Brackett** said he was bringing forward this proposed legislation on behalf of the Owyhee Cattleman's Association and the Idaho Cattle Association. This bill corrects the failure of the rules process and legislative intent.

**Senator Stennett** said she was confused about trying to reinstate the former language that was lost. **Senator Brackett** said he did not fully understand how this happened. He stated that during the overhaul of the grazing rules, numerous sections were deleted, some were revised and some were added. He said industry asked that the grazing management plan requirement that was in the old rules be retained. He thought the grazing management plan contained the old rules when they were approved. He commented he carried the rule acceptance on the floor and that is what he thought he carried, but when they came out, the rule that required the grazing management plan was not there. **Senator Brackett** said this bill simply just puts the plan back in and it also aligns with the new rules. He further stated the plan is between the prospective lessee and the Department.



**Senator Werk** said he wanted to understand the process completely. He said when he looked at current statute and when he looked at the rules, he was wondering when there were grazing leases up for bid, whether or not there was a requirement that those grazing leases be used for any particular purpose. **Senator Brackett** said he thought there were around 5% that actually went to bid. He stated that the others were not conflicted. He further stated that with the new rules additional categories were added. A conservation lease, for example, was in a different category and energy may be a category. Some of them are compatible and some of them are not.

**Senator Werk** wanted to know if this would be a conservation plan rather than an allotment lease. He asked with a grazing lease, did it have to be just for grazing. **Senator Brackett** said it had to be used for grazing. **Senator Werk** indicated that if a conservation lease was desired, then a lease would have to be applied for. **Senator Brackett** pointed out that the Department may not require that a proposal be presented at the time of renewal for every lease.

**Senator Werk** asked if the Department had the money to review these applications. **Senator Brackett** said they do not want to increase the paperwork and there would only be a small number that would be contested. These changes will have no effect on the general fund.

**TESTIMONY:**

**Bob Brammer**, Assistant Director over the Range & Lands Division with the Department of Lands, said there were about 1,300 grazing leases on 10 year lease terms and 120 expire every year. Less than 10% would be conflicted and someone else would apply for that grazing lease. **Mr. Brammer** said without a lease conflict, we have a grazing lessee that has an existing plan that's identified in these provisions of the lease. He commented they do not want someone to resubmit a new proposal for what they are doing already. There are 10-12 new applicants who have to submit a proposal. The Department staff reviews and goes through the proposal with the applicant and management actions are incorporated into the lease that is offered that applicant by special provision. The process goes from the proposal, negotiation, and the final approved management plan. **Senator Werk** asked why the wording was not in the rules anymore. **Mr. Brammer** said that when the rules were done, the wording got changed. There was a section that addressed grazing management plans and the requirement for the submittal of the grazing management plan with a grazing lease application. When we redrafted the rules that section was replaced and we deleted it and replaced it with a section that dealt with non-conflicted leases under the new process that the board had approved. It was his understanding that because that happened, the non-conflicted section we all agreed to as a proposal, that those changes would be accepted. That the explanation that he received from the folks that understand how these rules are formatted.

Again, he said, here was an opportunity for us to remedy that or waive it. From the Department's perspective he wanted to make it clear that this bill has enabled work on the language and it is something that can be incorporated into the current process. This doesn't create an undue administrative burden to the Department.

**TESTIMONY:**

**Wally Butler**, Range and Livestock Specialist with the Idaho Farm Bureau, said he was a part of the negotiations and he sat on the Idaho Cattleman's Association Task Force. The process was belabored in putting together the initial package of grazing rules that were changed in '09. He said it took several years of analysis to go through that in conjunction with the Department and this truly was an oversight that the livestock folks wanted to have the deleted grazing rules language reinstated.

**TESTIMONY:**

**Wyatt Prescott**, Executive Vice President of the Idaho Cattleman's Association, said the cattle industry supported this bill. The Task Force said they wanted to see the wording placed back into the rules.

**Senator Tippetts** said he had a conflict of interest as he has some state land leases.

**MOTION:**

**Senator Tippetts** made a motion, **seconded** by **Senator Heider** that S1271 be sent to the floor with a **"do pass"** recommendation. The motion **passed** by a unanimous **voice vote**.

**CONTINUATION  
OF S 1282,  
SPECIAL  
INCENTIVE  
HUNTING  
TAGS**

This item was continued from the meeting of March 2, 2012. **Senator Brackett** presented this bill. This legislation would provide sportsmen access to private land in exchange for the ability of landowners to sell special landowner tags. The legislation would change public policy, which the Fish & Game Commission would establish by rule, a program to provide special tags to hunt antelope, elk or deer in designated units. To be awarded a tag, the private landowner would allow hunters reasonable access.

**Senator Brackett** said he had a possible conflict of interest under Rule 39 (H) of Senate rules. He is a land owner and he does have an ownership interest in a ranching operation and he could qualify for an LAP tag, but never applied for and has never received a LAP tag.

**Senator Brackett** said sportsmen are losing areas in which to hunt. He outlined the legislation as cited above. He said he did not want to interfere or make changes. He pointed out that consensus was reached between the Department of Fish and Game and the Department of Agriculture, based on a mutual understanding that sportsman access to private land could be increased in exchange for landowners receiving LAP tag allocations that could be sold with negotiated conditions.

**Senator Brackett** said he knew there was opposition to selling tags, but times have changed. He indicated there are more and more "no trespassing" signs and if we do nothing, that will continue. **Senator Brackett** said the Idaho Fish and Game Commission voted to support SB1282. The Wildlife Advisory Committee has by consensus voted to support this bill with some conditions or policy elements of which he was in complete agreement.

**Senator Brackett** said he supports S1282 and the recommendations of the Department of Fish and Game and the Department of Agriculture's Advisory Committee. The recommendations are as follows: a) Rules for tag allocation should follow the current LAP tag program and any additional rules should be adopted by the Idaho Fish and Game Commission; b) The Idaho Fish and Game Commission should determine the types of tags, designated units (or portion thereof), and other implementation issues consistent with their current authorities; c) Sportsman access and other conditions for participation in this program must be a negotiated contract (on an individual basis) between the landowner and IDFG and be monitored as part of the acceptance of sellable LAP tags; d) This should be a pilot program and, as such, should be used on a limited basis and have a mechanism in place to assess its effectiveness in providing sportsmen access; e) Implementation of the pilot program should result in "Zero Opportunity Loss to Sportsmen." The pilot program should use a component of existing LAP (Landowner Appreciation Program) tag allocations and no new, additional tags should be allocated. f) The pilot program should remain separate from the current LAP program except that the tags for this new program should come from the current LAP allocation; and g) There must be a strong mechanism in place that will allow supervision and prevent misuse of the pilot program.

**Senator Brackett** said this was an opportunity to reverse the trend. Senator Werk and Senator Brackett had a discussion about the law and this pilot program, reasonable access, and voluntary participation on the part of the land owner.

**TESTIMONY:** **Sharon Kiefer**, Deputy Director of Fish & Game, talked about S1282. A copy of her testimony is attached to the minutes. She said that this proposed legislation creates a new section of law authorizing the Commission to establish a new program with rulemaking; to provide special incentive tags to hunt antelope, elk, or deer in designated units. Ms. Kiefer supports S1282. **Senator Tippetts** asked **Ms. Kiefer** several questions regarding the authority and enforcement for the tags.

**Chairman Pearce** cited page 2, lines 21-22, stating that if one was a good negotiator with the Department of Fish & Game, could one get more tags. **Ms. Kiefer** said certainly relative to what the land owner is going to offer that is a possibility. That is no different than their "Access Yes Program" in terms of who is going to offer up a land access agreement for payment. **Senator Pierce** asked if there were any problems with the "Access Yes" as far as local people who are upset about unfair treatment. **Ms. Kiefer** said she was not aware of any problems. **Chairman Pearce** said there was not a guide or standard to keep things equal. **Ms. Kiefer** said there were standard rating criteria that could be used as a model.

**TESTIMONY:** The following people testified in **support** of S1282: **Wyatt Prescott**, Idaho Cattleman's Association; **Dar Oberding**, Idaho Grain Producers and former Fish and Game Advisory Committee Chairman; **Wally Butler**, specialist for the Idaho Farm Bureau; and **Jack Oyler**, Sportsmen for Fish and Wildlife Board of Directors.

The following people testified in **opposition** to S1282: **Angela Rossman**, Idaho Wildlife Federation.

A copy of the testimony is attached as applicable.

**Senator Brackett** said there were a small percentage of LAP tags that would qualify under these special incentives and 10% or 20% that would be determined by rule. He said he understood there was a strong philosophical barrier that this bill seeks to overcome and that times are changing. **Senator Brackett** said he would prefer to go in this direction rather than just selling access. While that might work for landowners, certainly sportsmen don't get anything out of simply having access, so he asked for the Committee's consideration.

**Senator Siddoway** said he had better declare a conflict of interest under Senate Rule 39H.

**MOTION:** **Senator Heider** made a motion, **seconded** by **Senator Cameron** that S1282 be sent to the floor with a "**do pass**" recommendation. The motion **passed** with a unanimous **voice vote**. **Senator Stennett** voted **nay** and **Senator Werk** voted **nay** and both wished to be recorded.

**H 461:** This legislation will amend Idaho Code section 36-408 to allow for out-of-state 501 (c) organizations complying with IRS standards to certify disabled military veterans eligible in regard to issuance of free big game permits.

**TESTIMONY:** **Sharon Kiefer**, Idaho Department of Fish and Game, said that over the course of implementation, the bill sponsor and the Department were contacted by certain veteran's groups who have a 501 (c) (19) status rather than 501 (c) (3) status, yet they provide services for disabled veterans and they requested not to be excluded from participating in the program. The 501 (c) (19) status is specific to veterans' organizations and appears to be consistent with the intent of the program. House Bill 461 would add this definition to the qualified organization definition, which seems like a reasonable approach to the Department. Her testimony is attached to the minutes.

**MOTION:** **Senator Tippetts** made a motion, **seconded** by **Senator Stennett** that H461 be sent to the floor with a "**do pass**" recommendation. The motion **passed** unanimously by **voice vote**. **Senator Heider** will carry the bill.

**H 457:**

This bill will amend Idaho Code 36-405(c)2(b) to allow a parent or grandparent to designate a control hunt tag to their child or grandchild of minor age according to rules prescribed by the Fish & Game Commission. This bill will allow family members to enhance a youth's hunting opportunity and experience. The minor child must either be licensed to hunt or a participant in the Fish & Game mentored hunting program. Sale of the designated control hunt tag will not be lawful.

**TESTIMONY:**

**Sharon Kiefer**, Idaho Department of Fish & Game testified and a copy of her testimony is attached to the minutes. She said the idea is to create a mechanism to allow parents or grandparents to redesignate a control hunt tag to their child or grandchild, called the TTY (Transfer Tag to Youth).

**Senator Cameron** asked should this bill pass and becomes law and a grandparent passes this on to their grandson or granddaughter, would that tag be a youth tag or would it remain as an adult tag. **Ms. Kiefer** said that would depend on what the cost is and the Commission wants public input as to whether that tag should be purchased at a youth tag price or at the full adult price of the original applicant.

**Senator Cameron** asked if that was for the tag or the permit as well. **Ms. Kiefer** said the fees are the same fees for the application as they don't have a reduced fee for minors to apply for a tag. They actually pay for a resident or nonresident tag, the same kind of controlled application fee that their parent or grandparent would, so that is taken care of in the actual application for the tag. **Ms. Kiefer** said they draw and what we conceptually envisioned was that you would have to designate what tag is being purchased at what price and that is what the Commission would seek in public input. In terms of whether you stay the course with an original tag that was applied for, which is an adult tag, but it could be a senior DAV tag, which is actually the same price as a junior tag, so at that point there is not really a price differential.

**Senator Cameron** said the youth tag allows youth to legally shoot something of either sex, and if they draw a buck or a bull tag and the grandparent decides to give it to his grandson or granddaughter, would that tag be considered an adult tag or would it be a youth tag by which the grandchild could hunt either sex.

**Ms. Kiefer** said they currently have a rule for youth who can pull an elk general tag and they can be used in both A tag and B tag opportunities. What she said **Senator Cameron** was speaking of was that either sex, and her understanding was and she said she would check on this and get back to him right away, is that is tied to the nature of the controlled hunt, not the tag itself. **Ms. Kiefer** said they do have youth hunts that the tag was drawn for. Obviously, an adult cannot draw a tag from a youth controlled hunt.

**Senator Cameron** said by inference, what **Ms. Kiefer** was saying to him was that an adult cannot draw a youth tag and these tags would be considered, even if they are in that same hunt, one could have either a youth tag or an adult tag and these would be considered adult hunts. **Ms. Kiefer** said that was the intent of the Commission, but one could choose whether one is going to have the applicant pay the full adult price for that adult tag or the junior price, but the privileges of the tag would be as an adult tag.

**Chairman Pearce** said that if there was a child who was 13 years old and he had two grandfathers, they could both put in for a controlled hunt tag for him and he could even put in one for himself and so he has three chances to draw one tag. How do we justify that? **Ms. Kiefer** said he could not, though, be designated for more than one tag, so the child has to decide which hunt is the hunt he wants to participate in and both grandfathers either can consider other grandchildren or they can prepare to go hunting themselves.

**Chairman Pearce** asked if they had to name the child? **Ms. Kiefer** said they do not have to name him at the time they apply, but they can name him once they do indeed draw. **Chairman Pearce** said both grandparents put in with the intention of helping "Johnny" out, then "Johnny" also puts in for his own draw and he is really pulling three chances. Once that draw is made and one grandfather says he has one for him, he knows he can't buy two as far as permits for an actual kill, but he does get three chances to get in the hunt. **Ms. Kiefer** said he only gets one tag and so there is nothing now that precludes multiple hunt applications. In fact, we have our first draw and our second draw and we let people put multiple hunts down on their application. Even now they have multiple opportunities to put in on different hunts. Clearly, they would advise family coordination in terms of this process.

**MOTION:** **Senator Bair** made a motion, **seconded** by **Senator Werk** that H457 be sent to the floor with a "**do pass.**"

**SUBSTITUTE MOTION:** **Senator Tippetts** made a motion, **seconded** by **Senator Siddoway** that H457 be sent to the **amending order**. **Senator Siddoway** said this needs to be clarified because the bill specifically says, "to a minor child" and it does not specify that it's that child's parent or grandparent that has to designate a control hunt tag. Something can be abused and there is a pretty good chance it will be. He is certainly supportive of what we are trying to do with this bill.

**VOTE:** The motion **passed** by a voice vote. **Senator Tippetts** will carry the bill.

**Senator Tippetts** asked if **Ms. Kiefer** from the Fish & Game Commission, would be willing to give the Committee the language that **Chairman Pearce** would be comfortable with.

**H 525:** **Representative George Eskridge** presented H 525. He said this legislation provides that the Idaho Fish and Game Commission develop rules that exempt from tag possession to take wildlife for a disabled hunter companion who is assisting a disabled hunter possessing the appropriate tag and a valid disabled combination license. He stated the reason the bill was before them today was because he had a situation in his district where a constituent who is disabled, shot a game animal and he did manage to get to the animal who was wounded and finish the animal off. However, he was accused by Fish & Game law enforcement that instead of him doing the final deed, that his helper had done that and so as a consequence, in the middle of the night, they knocked on his motel room and they accused him of this and confiscated his game. The constituent was taken to court and Fish & Game dropped the lawsuit, but they did keep the meat. During the process, it was admitted by Fish & Game staff that their rules regarding handicapped helpers were vague and not clear. That is the reason for this bill for Fish & Game to identify exactly the ability of a handicapped helper to help that handicapped person and would allow that handicapped helper to finish off the wounded animal in the event that the handicapped person cannot do that act themselves. **Representative Eskridge** said other states have similar provisions.

**TESTIMONY:** **Sharon W. Kiefer**, Idaho Department of Fish & Game, testified in favor of this bill. She said that Idaho law and Fish & Game Commission rules make certain allowances for disabled hunters regarding the use of hunting aids, equipment and motor vehicles where they are otherwise prohibited. However, she commented that currently, Idaho law and Commission rules do not allow any hunter to tag an animal that another person has killed. **Ms. Kiefer** said that currently they have no lawful allowance for someone to provide final dispatch of an animal that a disabled hunter may have wounded but cannot access. A copy of her testimony is attached to the minutes.

- MOTION:** A motion was by **Senator Werk**, seconded by **Senator Stennett** that H 525 be sent to the floor with a **"do pass"** recommendation. The motion **passed** by a unanimous **voice vote**. **Senator Keough** will carry the bill.
- H 543:** **Representative Marc Gibbs** presented this bill which amends Idaho Code 36-1508 (b) to allow children younger than age 10 to possess a firearm for hunting if they are participating in the Fish & Game Mentored Hunting Program. He said the Fish & Game brought a bill to the House Resource Committee and it was an introduction hearing. House Bill 543 literally is House Bill 456 with one exception. Bill 543 on line 11 changes the age from 12 to 10 and that could be important if there are mentored wild turkey hunts in the state of Idaho that can occur at age 10. In Idaho, one can be nine years old to participate in hunter safety, one can hunt small game with the proper licenses from Fish & Game, for example, pheasants, ducks, wild turkeys, upland game, that type of thing and one would still be required to be 12.
- TESTIMONY:** **Ms. Kiefer** testified in support of this bill. Her testimony is attached to the minutes.
- MOTION:** **Vice Chairman Bair** moved, seconded by **Senator Cameron** that H543 be moved to the floor with a **"do pass"** recommendation. The motion **carried** by a unanimous **voice vote**. **Senator Bair** will carry this bill on the floor.
- H 459:** **Sharon Kiefer**, Deputy Director of Idaho Department of Fish and Game, presented this bill, which amends Idaho Code 36-407 and 36-416 to incorporate a nonresident three-day fishing license into the adult nonresident hunting license with no change in the license fee. This bill will enhance the nonresident recreational experience for those who might also desire to fish while hunting in Idaho. A copy of her testimony is attached to the minutes. She asked for the Committee to support this bill.
- Senator Siddoway** asked **Ms. Kiefer** if she could explain to the Committee why we excluded steelhead. **Ms. Kiefer** said they felt given the significant pressures they already have with those species, as well as a fairly significant cost for that permit, and since those were mitigation programs they already have a nonresident three-day license that does offer that opportunity. She stated a nonresident who wanted to purchase that license was at a pretty reasonable price. This was based on the concept that you are in the back country where there are mountain lakes and river segments that, if one wanted to take a little time to do something different as part of the hunt, one would have that opportunity relative to fishing. A copy of her testimony is attached to the minutes.
- MOTION:** A motion was made by **Senator Stennett**, seconded by **Senator Heider** to send H 459 to the floor with a **"do pass."** The motion **passed** with a unanimous **voice vote**. **Senator Stennett** will carry the bill on the floor.
- ADJOURNMENT:** **Chairman Pearce** adjourned the meeting at 2:55 p.m.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

**AMENDED #1 AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Wednesday, March 07, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<b>CONFIRMATION HEARING</b>	Chris Korell - Outfitters and Guides Licensing Board	
<a href="#"><u>H 396</u></a>	Relating to Water: Rathdrum Prairie Aquifer Management Plan	Brian Patton
<a href="#"><u>H 397</u></a>	Relating to Irrigation Districts: Election for Directors	Norm Semanko
<a href="#"><u>H 399</u></a>	Relating to Applications to Appropriate Water	Norm Semanko
<a href="#"><u>H 400</u></a>	Relating to Alteration of Channels of Streams	Norm Semanko
<a href="#"><u>H 401</u></a>	Relating to Irrigation Districts: Amendments to Code	Norm Semanko
<a href="#"><u>S 1378</u></a>	Relating to Flood Plain Zoning Ordinances	Norm Semanko

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

Linda Kambeitz  
Room: WW37  
Phone: (208) 332-1323  
email: sres@senate.idaho.gov

MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Wednesday, March 07, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** The meeting was called to order at 1:32 p.m. by **Chairman Pearce**.

**APPROVAL OF MINUTES:** **Senator Heider** made a motion, **seconded** by **Senator Siddoway**, to approve the minutes of February 15, 2012. The motion **carried** by a unanimous **voice vote**.  
**Senator Heider** made a motion, **seconded** by **Vice Chairman Bair**, to approve the minutes of February 29, 2012. The motion **carried** by a **voice vote**.

**CONFIRMATION HEARING:** **Chairman Pearce** called **Chris Korell**, Outfitters and Guides Licensing Board, to testify.

**TESTIMONY:** **Mr. Korell** said he was born in Garden Valley in 1970 and he had an outfitting business for the past 17 years at the southwest Payette River in the Lowman area. He said he really liked serving on the Board, felt it was a real honor and this would be his second term. **Vice Chairman Bair** asked **Mr. Korell** to tell the Committee about the more difficult issues he has worked through over the last year or two. **Mr. Korell** said the economy was a real limiting factor and his business was operating at 30 to 40% of what they had been in the past 13 years. He said a lot of game was lost and they had to cut back on the number of clients. He commented that has turned around a little bit due to a slight improvement in the economy. He said that right now his business was 100% booked for the next year for the first time in four years. **Mr. Korell** said the elk population is starting to improve because Fish & Game helped with preservation.

**Senator Tippetts** asked **Mr. Korell** if there was a process for the outfitters and guides to give feedback to the Fish & Game. **Mr. Korell** replied yes, they have a representative on their Board from the Fish & Game and they have a good working relationship.

**Senator Siddoway** indicated since the Board wanted to enhance revenues a couple of years ago, one of the options was they were looking at offering cross-country skiing and spending the night in a yurt. He asked if **Mr. Korell** could tell him if there were any kind of outreach programs to bring in other nontraditional outfitters and guides to help offset some of the expenses of the organization. **Mr. Korell** said they are always looking to add these types of things, but it depended if it met the actual code and policy, for example, being a hazardous excursion. He said they have opened some doors and have added some new activities to help. **Senator Siddoway** asked if it helped and was it enough to offset the expenses or was the association still looking for some different enhancements, such as increasing licensing or anything like that now. **Mr. Korell** said he had hoped they had solved the problem, but anything is a help. He said he lost a number of licensed



outfitters in the last three or four years, but he said he didn't think it had solved the problem, but they were always entertaining new activities.

**Chairman Pearce** asked **Mr. Korell** what types of hunts did he book. **Mr. Korell** said all of their hunts were booked, including elk, mountain lion, bear, and wolves. He said they had seven wolf hunters this winter, which helped them financially and the land capability to keep the wolf numbers down. **Chairman Pearce** thanked **Mr. Korell** for coming and he indicated the Committee would vote next Monday, March 12 and he wished him good luck in having a successful year.

**H 396:** **Chairman Pearce** introduced **Brian Patton**, Department of Water Resources, who presented H 396.

**PRESENTATION:** **Mr. Patton** said that this legislation was to approve the Rathdrum Prairie Comprehensive Management Plan (RCAMP) as a component of the Comprehensive State Water Plan. The RCAMP was authorized by Sections 2-1734A and 42-1779, Idaho Code. The RCAMP establishes long term strategies to preserve Idaho's ability to manage its water resources for Idaho's need within a shared aquifer system. He then introduced **Helen Harrington**, Idaho Department of Water Resources, who did a slide presentation, a copy of which is attached to the minutes.

**TESTIMONY:** **Ms. Harrington** outlined the key elements of the plan. She said the key elements on pp. 3 and 4 were as follows: promote establishment of water rights by municipal water providers under the Municipal Water Rights Act of 1996; 2) Improve coordination with downstream interests, with Idaho taking the leadership role in framing the discussion; This plan is directed at water quantity, but recognizes the high quality water in the aquifer; Promote water conservation and efficiency to demonstrate good stewardship of the water resource and be a good neighbor as we share this resource.

**TESTIMONY:** **Bob Graham**, Water Resource Board Member from Bonner's Ferry, gave a brief history of the planning of the Rathdrum Prairie Aquifer Management Plan. He said there was a great demand from that aquifer from the state of Washington, in particular from Spokane. Some of the legislators and people from northern Idaho were wondering why southern Idaho got all of the attention and nothing was happening in northern Idaho. There were two requests for extreme heavy water use of the Canadian natural gas pipelines that come down from Canada through this area into California. A few years ago, a couple of different outfits put in an application for use of that gas for power generators. He said the amount of water needed was tremendous. At that time, the applications were turned down.

**Mr. Graham** said the committee was a good cross-reference of the people and the stockholders in the Rathdrum area and it became a very effective committee. He said he thought they had a good plan and he hoped the Committee could see that and could pass on it and get it finalized. He said there was a good 50 years of water, which was unique to Idaho. That made it a little easier to deal with and cut down on the major concerns opponents may have had.

**TESTIMONY:** **Mr. Patton** concluded the presentation and said he would stand for any questions.

**Vice Chairman Bair** said he was curious about the stability of the Rathdrum Aquifer and asked if it was in a state of decline. He said that with all of those lakes feeding into it, it looked like a very stable aquifer. **Mr. Patton** said the aquifer was very stable and they have not seen any major declines on this aquifer. What he has seen, however, is where the aquifer discharges into the Spokane River downstream of the state line. They have seen some declines in flow to those springs and that is what has the state of Washington looking upstream, saying that Idaho needs to limit their water use and stop issuing water rights. So this has led to a little bit of tension between the two states. **Vice Chairman Bair** asked how much of that water has been appropriated for use. **Mr. Patton** referred this question to **Ms. Harrington**. **Ms. Harrington** stated this was a prolific aquifer.

**Senator Heider** asked **Mr. Patton** how much money was going into the Rathdrum Plan. He said the state money was used in the development of the plan in 2008. He said there were several different things being paid for by that fund. **Mr. Patton** said they did not anticipate any money being provided from the general fund. They will use the allocation of funds in a case-by-case basis.

**Senator Brackett** asked **Mr. Patton** if he could assure the Committee that the local water users and residents that they are fully on board with this plan. **Mr. Patton** said yes, the local folks were fully on board with this plan. He said the Water Resource Board appointed an Advisory Committee that represented cities, agriculture, the power company in the area, the local Indian tribe and other users. There was very broad-based support from this group of Advisory Committee members.

**Mr. Patton** said he was not sure that the individual homeowners with individual wells were not actively represented on the Advisory Committee. He said, though, the plan should not affect them in any way. **Senator Brackett** asked **Mr. Patton** if it would be possible for his team members to confirm what he just said.

**Ms. Harrington** asked **Senator Brackett** if he was asking about representation in support of this plan. He said not necessarily about representation, but, at the end of the day, is there broad local support for what is being done here. **Ms. Harrington** said yes because they did hold a hearing with public notice to provide any testimony to hear any opposition and they did not receive any. Much like any group of people brought together in Idaho, some may be representing the city of Coeur d'Alene but they might have had a private well. She thought there was an involvement from people by the multiple roles they play. She stated again they have not heard any opposition to this plan. The area this covers is part of phase 1.

**Mr. Graham** stated that when the original Rathdrum Plan was done, there was a line drawn designating the aquifer and that line was on the Bonner-Kootnai County line. In a very short period of time when they started this, someone from one of the federal agencies recognized that the aquifer went beyond the Bonner County line and went north of it about 2 or 3 miles and covered only a portion of Bonner County. That created some waves because the bottom part of that line included this very southern hand of Pend Oreille Lake. A few of the Idaho legislators were very concerned about why that line moved to start with and whether or not that move was necessary. The answer was that it moved because somebody realized that the aquifer was out there and the plan was to study the entire aquifer. For that reason it was moved and for no other reason. He said after we met with the Idaho legislators and explained to them how and why that happened, he was pretty sure they were satisfied. He commented we met with the legislators during the study process and that did not come up again.

**Senator Brackett** said he wanted to be supportive, but he wanted to have assurance, which he thought they had received, that this was what people wanted.

- MOTION:** **Vice Chairman Bair** made a motion, **seconded** by **Senator Heider** that H396 be sent to the floor with a **"do pass"** recommendation. The motion **passed** by a **voice vote**. **Senator Keough** will carry this bill on the floor with **Vice Chairman Bair** as an alternate.
- H 397:** **Norm Semanko**, Executive Director of the Idaho Water Users Association, presented this bill.
- PRESENTATION:** **Mr. Semanko** said this legislation changed the dates when an unopposed irrigation district director candidate shall be declared elected from five days after the written nomination deadline expires to the next regularly scheduled meeting of the board of directors. He said he was asking to eliminate the provision for a special election when the irrigation district director candidate was unopposed.
- MOTION:** **Senator Tippetts** made a motion, **seconded** by **Senator Siddoway** that H397 be sent to the floor with a **"do pass"** recommendation. The motion **passed** by a **voice vote**. **Senator Tippetts** will carry this bill on the floor.
- H 399:** **Norm Semanko**, Executive Director of the Idaho Water Users Association, presented this bill.
- PRESENTATION:** **Mr. Semanko** said this legislation provides that proposed appropriations of water involving the use of diversion works or the irrigation system of a canal company or irrigation district require the consent of such company or district prior to approval.
- He said all they were doing was mirroring the language and concept in 42108 for transfers and having the same requirement for the appropriations of water. **Mr. Werk** said he wanted to make sure that he was fully comprehending and he said he thought **Mr. Semanko** said that currently if a new water right was granted that, but he was not sure if he was saying that under current law, the person or the entity that gets the right can automatically use the elements that would be involved in transferring the water with the district or whether or not he was saying that right now the district can say no. **Mr. Semanko** said it is the latter. He said 42108, the transfer statute, requires that whenever someone is seeking, for example, **Senator Cameron** wants to transfer his portions of his irrigation use to Washington state, the irrigation district has to consent to that transfer because his potential change could affect everyone in the entire system and so that was the rationale. It is curious, he said, that for appropriations there is no corresponding requirement because obviously there can be an impact there too, but it is the latter. There has to be some permission granted at some point for a new appropriation wanting to use the canal facilities.
- Senator Werk** asked **Mr. Semanko** if there could be an instance under the language that you have here that an irrigation district or such corporation could say no, simply no and never grant consent. **Mr. Semanko** replied he thought this would be read the same as 42108 that requires that consent. If the irrigation district determined it didn't make sense or it wasn't going to work for the facilities or the other users in that canal entity, then this does allow them to say no. If it is going to be consistent with 42108, and he is not aware this was going to happen all of the time, but he is sure there have been circumstances where they have said no, this won't work for the shareholders at large in the canal company, but the answer is yes.
- MOTION:** **Senator Cameron** made the motion, **seconded** by **Vice Chairman Bair** that H399 be sent to the floor with a **"do pass"** recommendation. The motion **passed** by a **voice vote**. **Senator Cameron** will carry the bill on the floor.
- H 400:** **Norm Semanko**, Executive Director of the Idaho Water Users Association, presented this bill.

**PRESENTATION:** **Mr. Semanko** said this legislation establishes a statute of limitations of two years for stream channel alteration violations. This limitation is identical to the existing limitation for environmental quality violations under Idaho Code Section 39-108.

**Senator Stennett** asked what determined the two years for a statute of limitations. **Mr. Semanko** said they looked at 39-108, which is an existing code section in the DEQ code. He said it is very broad and as far as he could tell from reading it that all environmental quality violations were handled by DEQ, so they didn't want to be less restrictive than that.

**Chairman Pearce** asked **Mr. Semanko** that if someone put a head gate on a stream or something that they didn't get permission to do, in two years of nothing being done about it, they would no longer be in violation of the statute? **Mr. Semanko** said that assuming that it was a violation of a Stream Channel Alteration Act, his understanding was the way the statute of limitations works was that from the time the perceived problem is discovered or should have been discovered by the agency, that two year statute runs. However, it works in the DEQ it would work the same in the IDW world. After that two year period, unless there has been a renewed problem, a new potential violation from that two year period running, that statute of limitations would be done. If someone was sued in the third year, they would have the opportunity to raise the defense, as they do now under all of the environmental laws, except this one, apparently. They would raise the statute of limitations as their defense.

**MOTION:** **Vice Chairman Bair** made a motion, **seconded** by **Senator Siddoway** that H400 be sent to the floor with a **"do pass"** recommendation. The motion **passed** by a **voice vote**. **Vice Chairman Bair** will carry the bill on the floor.

**H 401** **Norm Semanko**, Executive Director of the Idaho Water Users Association, presented this bill.

**PRESENTATION:** **Mr. Semanko** said this legislation provides a process for the transfer of lands between irrigation districts through exclusion from one district and annexation into another. He said they have been working on this for two years. There is no process in the code and they are asking the Committee to support this concept and have the attorneys work on developing the language. He said both irrigation boards would have to agree to this. He explained that one irrigation district would exclude the lands from their district using the existing process in the code and the other one would annex the lands in their district using the existing process. The land owners that would be impacted need to be involved in this. There is a procedure for appeals, for decisions and the criteria that need to be considered. He said he felt this was drafted very tightly and provides a process, which is much better than a hodge-podge. He feels it will provide a great deal of flexibility as they continue to organize, particularly in this valley and in Bonneville County and allow the irrigation districts to cooperate to have a process to do that. This is supported by the Water Users of Idaho.

**Vice Chairman Bair** asked **Mr. Semanko** if there was a provision so that water district members from both water districts can vote on the decision that has been made or was that just an arbitrary board decision. **Mr. Semanko** said he hoped the decision by the district was not arbitrary because the board takes their job seriously, but more importantly, the code section does lay forth the criteria that needs to be considered and included in the resolutions. He referred to page 2, section 431123. Both of the districts proposing to do the transfer of lands would need to adopt the resolution either separately or jointly. These folks are ultimately responsible to the landowners and the district at regular elections. The following items need to be identified by the annexing district, the legal description, the reasons for the transfer, that it is in the best interest of the land owners, etc. There are 11 criteria. Notice has to be provided, there is a hearing where people get an opportunity to

comment and then the decision is rendered through the order that is appealable and then it is recorded. Irrigation district 1 could vote to exclude the land and irrigation district "b" could vote to annex the land, but there would be no requirement that any of these criteria would have to be considered. It would not be voted on by all of the landowners in the district.

**Vice Chairman Bair** asked what would be wrong with the shareholders of the water district having an opportunity to vote on a resolution rather than just the water voters. **Mr. Semanko** said he supposed it could be structured that way and he guessed it affects one person or a couple of people in the district whose lands are being transferred and the board is able to hear that testimony and make a decision. He said he didn't know how that worked and he didn't know how that criteria would be considered. The Board is charged through the statute with the responsibility to consider all of these criteria and then make a decision that can then be appealed if it is something folks feel injures them. However, with elections, it is not something one could appeal.

**Senator Stennett** asked **Mr. Semanko** if everything originates and runs through the Board, she was trying to think of a situation when she was told there was a possibility of a group who may want to withdraw and create a new district before they could move themselves over to the new district. It is something that may impact her area, and she was wondering if this new legislation is something that is guiding and directing and in the end the determiner would be the Board of Directors and whether that is possible.

**Mr. Semanko** said they have had this discussion. He said this legislation does not relate to that situation. This would be a transfer of lands between two existing irrigation districts. The idea of an irrigation district breaking apart and having separate districts or whatever would be something that would have to be done in a separate piece of legislation or maybe an attorney could figure out how to do it under the existing code. He said he believes creating a new irrigation district requires going through the County Commission process.

**MOTION:** **Senator Siddoway** made a motion, **seconded** by **Senator Heider** that H401 be sent to the floor with a "**do pass**" recommendation. The motion **passed** by a **voice vote**. **Senator Siddoway** will carry the bill on the floor.

**S 1378:** **Norm Semanko**, Executive Director of the Idaho Water Users Association, asked that this bill be continued until next week on Wednesday if possible. He said they had a serious issue and they want to discuss it with the Committee, but they don't want to waste their time today. They have indications from FEMA that they need to talk with them additionally about this language and they don't want to try to force anything and they need to work with them. The Director of Homeland Security, who is an integral part of working with FEMA, had a death in the family and he was attending the funeral today and he will be back on Monday. They want to try to find a way to salvage the particular language and this is already the second version. This is a replacement bill and it has forced the discussion between agencies.

**MOTION:** **Senator Tippets** made a motion, **seconded** by **Senator Werk**, that we hold S1378 **at a time certain**, which would be up to the discretion of the **Chairman**. The motion **passed** by a **voice vote**.

**Senator Werk** asked that for the record, that he noticed the authorization for the background check that was delivered to him for **Mr. Korell**, has a social security number on it and on others it was blocked out. There have been requests, and he said he thinks these are coming from the Governor's Office, but it seems inappropriate for us to have that kind of personal identification and he would love to have it so the Governor's Office insures that we don't see social security numbers.

**ADJOURNMENT:** **Chairman Pearce** adjourned the meeting at 2:30 p.m.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:30 P.M.  
Room WW55  
Monday, March 12, 2012

SUBJECT	DESCRIPTION	PRESENTER
<b>MINUTES:</b>	Approval of Minutes for February 27, 2012	Senator Tippets
<b>COMMITTEE CONSIDERATION OF GUBERNATORIAL NOMINATION</b>	Chris Korell - Outfitters and Guides Licensing Board	
<a href="#"><u>H 495</u></a>	Relating to State Endowment Lands	Representative John Vander Woude
<a href="#"><u>H 494</u></a>	Relating to the Idaho Board of Scaling Practices	Representative Scott Bedke
<a href="#"><u>H 496</u></a>	Relating to Exemption of Members of Armed Forces, Reserves, National Guard by Fish & Game, and Veterans from Hunter Education Requirements	Representative Lynn M. Luker

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippets  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

Linda Kambeitz  
Room: WW37  
Phone: (208) 332-1323  
email: sres@senate.idaho.gov

MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Monday, March 12, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippets, Werk, and Stennett

**ABSENT/EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:35 p.m.

**APPROVAL OF MINUTES:** February 13, 17 and 27, 2012

**MOTION:** **Senator Brackett** made a motion, **seconded** by **Senator Siddoway** to approve the minutes of February 13, 2012. The motion **passed** by a **"voice vote."**

**MOTION:** **Senator Tippets** made a motion, **seconded** by **Senator Heider** to approve the minutes of February 17 and February 27, 2012. The motion **passed** by a **"voice vote."**

**COMMITTEE CONSIDERATION OF GUBERNATORIAL NOMINATION:** **Chairman Pearce** reminded the Committee they needed to vote on the Gubernatorial nomination for **Chris Korell**, Outfitters and Guides Licensing.

**MOTION:** **Senator Siddoway** moved, **seconded** by **Vice Chairman Bair** to send the gubernatorial appointment of Chris Korell, Outfitters and Guides Licensing, to the floor with the recommendation that it be confirmed by the Senate. The motion carried by a **"voice vote."** **Senator Siddoway** will carry the recommendation on the floor.

**H 495:** Relating to State Endowment Lands.

**PRESENTATION:** **Representative John Vander Woude** presented this bill. According to the Idaho Constitution, Article 9, Section 4 and Article 9, Section 8, this proposed legislation is designed to clarify procedures of the Land Board, to the extent that they may more ably discern between government and private sector properties. Additionally, it encourages expedited handling of land sale proceeds to better protect the constitutional mandate of seeking the best long term benefit of the endowment beneficiaries.



He indicated this bill was to better protect the endowment funds of our schools and outline how money was to be invested. Two years ago, the Land Board bought and is now operating a self-storage business in Boise. They have stated in their asset management plan that their goal is to seek out and purchase the most profitable businesses so they may get a better return for the beneficiaries. This creates an unfair advantage for all small businesses that may be in the same business as the state may get into. The state does not pay property taxes but still gets all the city protection services, such as fire and police. The state does not pay income tax on profits and the state is self-insured so it does not have that expense. Should the state lose money, it is less money going to the schools. Any business will have a difficult time competing with all these advantages against them.

**Representative Vander Woude** said we would hear that we need to look at things over the long term and not the small snapshot. The state has been in the commercial property business for 10 years and their rate of return is about 1.23%. They have a building that has about a 70% vacancy rate. The storage business they have had for about two years and they are bragging about their good short-term investment. He said he cautioned that as one looks at the short-term numbers, as in any business, one looks at depreciation. The state does not count depreciation into their operating costs as many businesses do. He said that anyone who has gone to a self-storage place can quickly see that these are not highly structured, solid buildings, and only last for a certain length of time. We should really look at how long the life is of a building and how long we have before that asset is no longer worth anything. **Representative Vander Woude** said we have buildings in the Capitol Mall the state would really like to tear down because they no longer have value. When we look at the return to the endowment fund, we are mandated by the Constitution to look at the long-term return. He pointed out that on page 27, in the State Asset Management Plan, they have stated they would like to acquire farm land in the path of urban expansion. This sounds like land speculation to him. He queried, is that what we want our endowment funds invested in?

He said property three or four years ago probably was selling in his area for \$50,000 to \$60,000 an acre. Now one would be lucky to get \$10,000 for it now. That is what happens with land speculation. He gave several examples, including several people who went in on the LID with the Kuna Sewer Plant. They figured that \$10,000 an acre was going to be the cost, but they were going to sell their land for \$65,000 so it looked like a good investment. Now, they have no value. That, he said, is what happens if we start investing in land and speculating on what the return is going to be.

**Representative Vander Woude** said the state said they would like to go into businesses. He gave an example of Blockbuster Video that was here in this valley 10 years ago. It was one of the hottest little businesses one could find in every shopping mall. Where are they now? They are bankrupt and gone.

Is that what we want to invest our money into? He said we don't. We need to look at what is the proper role of government. Is it to be in direct competition with the private sector? He said he hoped the Committee would say no, that is not the proper role of government. The government should not be out there competing in the private sector with all the advantages they have. He added that even if the state needs repairs done on their businesses, it is all tax free as they don't pay sales tax on those repairs either.

There are a lot of different revenue sources that private business pay into the state. The state doesn't pay and they can make their return look a lot better. He cited the business he is in, if he didn't have to pay property tax or income tax, he might not need this job to keep things going. He would like this advantage himself, but he does not have it and he does not believe the state should have it either as it competes against him. If the state wants to buy a gas station or if they want to buy a dairy, he would be more than glad to sell the state his dairy as he has not made any money from that in five years. He turned the rest of the presentation over to the co-sponsor, **Representative Burgoyne**.

**Chairman Pearce** asked the Committee if they had any questions. **Senator Tippets** asked **Representative Vander Woude** about the investment and endowment funds in the constitution indicating the investment must be at the highest rate of return and he asked to have that section identified. He deferred the answer to **Representative Burgoyne**, who said it was in Article 9, Section 8.

**Senator Heider** stated that when he normally deals with his investments, he has been told to diversify his portfolio. Is it not a wise investment that we invest in some commercial as well as bare land. **Representative Vander Woude** said it would be if one could get a good return. But he said, look at their track record of 1.23% over the 10 years they have been in commercial property and say if it is very marginal or whether that is a good rate of return. He further stated, the state does have diversification because they have the permanent endowment funds that are already invested in stocks and all the other types of entities and there is commercial property at Payette and Priest Lake, a residential property, and commercial property that is now downtown. They would like to expand and centralize our holdings into one area, which, he thought, would unduly affect the commercial property in Boise because the goal of their asset management plan is to increase the commercial property they currently have in Boise.

**Senator Cameron** said **Representative Vander Woude** artfully spoke about the differences between state government, local government and he said the bill approaches those differences in one direction. He said he wanted to know if he considered changing the exemption so that state government, local government had to pay property tax and sales tax and leveling that playing field because that would be another approach. **Representative Vander Woude** said they looked at that area, but when one looked at state by state different holdings and what is exempt and what is not as far as buildings and businesses, it becomes real tricky as to what one would classify as having to pay taxes or income taxes, property taxes and it would complicate the issue even more than this would be in trying to solve it that way.

**Senator Cameron** said to **Representative Vander Woude** that some of them, a couple of years ago, or even last year, when they were looking dramatically for revenue, that became a discussion point that perhaps we ought to level that playing field on taxation across the board. He said his next question, was it the intention that the state should not engage in purchasing anything that could potentially be considered competing with the private industry and he wanted to know how that comports with our existing provisions for grazing leases, etc., etc. **Representative Vander Woude** said it was his intention that the state not be in the type of business that would require a separate business license as the self-storage unit is and it is not their intention that they should get rid of their garages or office space. He wished they would manage it better, it is not his intention they would have to dispose or get rid of all of that. When one starts to operate as a separate business entity, that requires a license from the state in order to operate in and that is where he thinks they have crossed the line.

**Senator Brackett** said that using the example of the storage units, if the state would contract with a management company, then would that be satisfactory?

**Representative Vander Woude** said that would not work as long as they owned the business. He believed they would have to sell the business entity. He said his intent with this bill is they can still own the property, they can still own the buildings, but the business entity itself, they would have to sell. They could sub-lease, it could be a lease-purchase or whatever, but somebody else would technically operate that business and be on a different tax ID and everything else for the purpose of the business.

**Senator Brackett** said he had questions about the constitutionality. One must act in the sole benefit or for the sole interest of the beneficiary and that is to maximize interest for the endowment and it seemed to him that this gets fairly close to crossing the line as far as a constitutional issue. He asked to have the opinions in the packets condensed and help with the information.

**Representative Vander Woude** said the opinion that he has came from David Leroy who said this was a constitutional prerogative and what we forgot was when we read "as a sole beneficiary" that may be prescribed by law, which gives us some legislative authority over how that was done and he believed that cleared up the constitutionality of the bill before them. **Senator Brackett** said that in his past experience with the grazing leases, the law was passed and it was found to be unconstitutional.

**Senator Stennett** asked **Representative Vander Woude** if he felt if it was in the best interest of the endowment lands for the legislature to be controlling this over the Department of Lands? She said we were asserting ourselves into the direction of the Lands with this bill and she wanted to see if he felt this was correct.

**Representative Vander Woude** said he didn't think a lot of power was given and that this was very limited and it gave them one certain area where we thought they have crossed the line and he thought that if the endowments didn't perform, the legislature would have to pick up the tab for the schools. We do have to watch how that money is invested and what type of returns are given because the state legislature is responsible.

**Representative Burgoyne** addressed the Committee and made comments on the various questions that were asked. He talked about the issue of contracting with a management company and he said what this bill does is draw a line. This bill says the Land Board can deal with land and the improvements on land. So, the landlord can buy commercial property and own the improvements in an office building, for example, and lease the office space to businesses. This bill does not prescribe that. With respect to the storage units, this bill says we can buy the land and they can buy the storage unit complex. What this bill says is that the landlord cannot operate the business that runs the affordable storage business that leases itself to others, although the land and the improvements can be leased to a company that does that. He drew an analogy with a shopping center. He said a shopping center could be owned by the state of Idaho, the land and the improvement, which is the building, and the spaces can be leased to retailers. What this bill says is the state of Idaho can't own Sears, the shoe store, etc. The state of Idaho can contract with a company that wants to operate portable storage.

**Representative Burgoyne** said he would like to address the constitutionality and he referred the Committee to Mr. Leroy's opinion. He pointed out that the Attorney General issued an opinion last spring when H 188 was brought before the House Resources Committee and the constitutionality was questioned. He said they attempted to redraft and take account some of the things the Attorney General said. Mr. Leroy was asked for an opinion by the House Committee and gave one, was subject to the limitations of the Idaho Admission Act, which authorizes the sale, lease and exchange of the endowment of lands. With respect to government lands, Article IX, section 8 of the Idaho Constitution, the legislature has the legal authority to direct the Land Board in the manner described by the questions presented. He went over the three questions presented and the conclusion by Mr. Leroy. A copy of the legal opinion dated February 24, 2012 is attached to the minutes.

The three questions were: 1) Does the Idaho Legislature have the legal authority to direct the Land Board to sell all non-agricultural business operations located on state endowment lands to private persons? 2) Does the Idaho Legislature have the legal authority to direct the Land Board to lease or sell any non-agricultural improvements on state endowment lands to private persons? and 3) Does the Idaho Legislature have the legal authority to limit the length of time that proceeds from the sale of endowment lands may be deposited to six months?

The conclusion was stated in the opinion of Mr. Leroy as subject to the limitations of the Idaho Admission Act, which authorizes the sale, lease and exchange of endowment lands, and Article IX § 8 of the Idaho Constitution, imposing trust obligations on the state with respect to endowment lands, the legislature has the legal authority to direct the Land Board in the manner described by the questions presented.

**Representative Burgoyne** said it was his personal opinion, after reading the admission bill and having read the constitution, he did not think the landlord had the constitutional ability to operate the affordable storage business. He said he didn't think the admission bill was at all clear. It says that the state of Idaho is authorized to deposit in a land bank fund to be used to acquire, in accordance with the state law, other land in the state. He said that when the state of Idaho sells land and the money comes into the land bank fund, the admission bill limits the use of those funds to buying land. He said he felt that was very clear. He said, in his opinion, to buy the grocery store in the shopping center or the shoe store, was not constitutional. This bill makes that clear in statute. The Land Board's authority is to buy land and it does not say to buy businesses. We diversify through the permanent endowment fund and through passive investments in the commercial marketplace.

He cited Article IX, Section 4 having to do with the public school permanent endowment fund. Part of that section says that if those proceeds are not used to acquire other lands with any time provided by the legislature, the proceeds shall be deposited into the public school permanent endowment fund. The constitution does not expect that the landlord will be dealing with the individual businesses or owning these retail type retail businesses. The permanent endowment fund is for this generation and future generations of children.

The constitutional authorization, according to Section 7 of Article IX, provides the state board land commissioners shall have direction, control and disposition of the public lands of the state. The constitutional authorization is of the public lands. This bill implements the provisions of the constitution.

**Representative Burgoyne** said the question of diversification has come up a great deal. Diversification in and of itself is not a good thing if one is diversifying into unsound or risky investments. He believes the endowment should be diversified, but we shouldn't diversity into everything.

**Representative Burgoyne** talked about the issue of taxes. He queried if decisions were going to be made on the basis of market considerations or will they be made because the landlord is a political body and will those decisions be made on the basis of politics? Will the decisions to be made that appear to be in the private marketplace really be decisions that are the result of lobbying political figures. He said he thought it would be the latter. There is a real issue when one politicizes the marketplace and about the soundness of the economy and the state whether or not the endowment is being pursued for political reasons or for the trust obligations for school children and the others who benefit from the endowments in this state. It should not be legal to do this. In his opinion, if we don't adopt this bill, we will be opening the door to the possibility of that. He said he did not think that anyone at the Department of Lands intended to do this. He asked if we wanted that kind of conduct to be legal? He felt the answer was no.

He said it is one thing for the state of Idaho to own a grazing lease, to own agricultural land and to lease the grazing rights or to lease the agricultural land to a farmer or rancher. It is entirely a different proposition for the state of Idaho to be the farmer or the rancher and this is where this bill draws the line.

**Representative Burgoyne** referred to the question asked by **Senator Stennett** whether the legislature would be asserting itself over the Idaho Department of Lands. He said he didn't think this was what this bill did. He said he thought this bill constitutionally prescribes by law, what a landlord may do in this area and not the Department of Lands.

**Representative Burgoyne** referred to page 1 of the bill and said it was a statement of legislative findings. He quoted from the bill, Section 58-104, lines 22 and 35, a copy of which is attached to the minutes, referring to the constitutional authorization of the Idaho legislature to regulate the procedure of the Idaho state land commissioners. Subsection IV, line 41 carrying over to page 2 sets out certain trust principles from cases. Trust assets are for the benefit of the present and future generations and constitute a trust of the most sacred and highest order. He said he thought, "shall forever remain inviolate and intact" was a very important principle. He said if he had a trust obligation to future generations, how one assesses risk and what one does about risk becomes an entirely different calculation.

**Representative Burgoyne** referred to the trust assets starting at line 3 of page 2 and said they must be managed to foster and promote their long term stability and permanency. The use of the trust assets and the acquisition, holding, owning or operation of a potentially unlimited spectrum of business enterprises by the Idaho state board of land commissioners, will expose trust assets to undue risk of loss. He said if one looks at the plans that have been in existence in the last decade or so and you look at the two citizen type committees that were appointed and who studied these issues, what you see is a desire to enter into a broad range of commercial businesses as direct owners, not as diversified passive investors. Where would one get the expertise to run a specialized company? He said he did not mean to suggest that there is a lack of expertise in the Department of Lands, but the Department of Lands has about 120 years of institutional experience dealing with our traditional public lands, not running shoe stores or fast food restaurants. The failure rate of new businesses is pretty high and it presents very unique and special risks.

He quoted the restrictions of Section 2 on page 2, lines 24-29. Essentially, it says that all non-agricultural improvements on said land shall be leased or sold. So, the state does not have to sell all of the improvements. They can own an office building and they can lease the office space in the office building. Section 3 on page 3 is there because 58-104 (a) needs to be changed to (b), a technical correction and Section 4 of the bill on page 4 is there to deal primarily with a change on line 11 and in Section 3, the five year limitation on monies in the land bank to six months. Section 5 of the bill relates to a change in 5-246 that is found on page 5 of the bill, line 21, where 58-104 is changed to 58-104 (a) because of the citations in the bill.

**Representative Burgoyne** said he agreed with Mr. Leroy's opinion and he said he felt it more soundly addressed the issues that were raised by the bill.

**Senator Stennett** said his presentation explained a lot of things. She asked how does it differ from owning the property and leasing not only the property, but outsourcing or leasing the business within the building and not actually having the Department of Lands people actually operating shoe stores.

**Representative Burgoyne** said the difference he saw was that when the state retains ownership, it retains risk of financial loss for the operation of the business. There is some financial risk in owning the building and the improvements.

**Senator Stennett** asked why there was a restriction from operating from five years down to six months. She said it appeared to be a drastic change rather than two years or somewhere in between.

**Representative Burgoyne** said he thought six months should be enough if appropriate pre-planning is done so that instead of bumping up against the deadline of keeping money in the land bank. The six months will be a strong signal to a landlord to preplan where they are going to reinvest when they sell land, rather than using the land bank fund as kind of generalized thought of "we are just going to see what develops and what opportunities exist" kind of fund.

**Senator Stennett** asked **Representative Burgoyne** to address what if the land board chooses to divest themselves of the cottage sites and they become suddenly "flush" with a bunch of money they now have to do something with in six months. One would want to take advantage of the opportunity of those people that have come forward to buy their leases in these cottages. One may not necessarily have immediate turnaround where those funds should go.

**Representative Burgoyne** said to look at what is being proposed. He stated there was a proposal for a land trade. He said the landlord should be that of a dealer of the land and he believed that trades would be a better practice than getting them and holding cash. He also said there is the idea out there that somehow putting money into the permanent endowments is not as good an idea as investing in a storage unit. He said he disagreed and that moving money into permanent endowments is probably a very good idea. He said he supports exposure to the marketplace passively and he has no objections.

**Chairman Pearce** asked what the ten year return was on the endowment fund that has been invested. **Representative Burgoyne** said he did not know.

**Senator Tippetts** said the Senate just passed IGEMS, which sets up an opportunity for the state to work cooperatively with the universities for private enterprise, with the universities working on research in the private sector, working on the application for that research. In questioning the director of the Department of Commerce, he asked what types of business arrangements might eventually arise from that cooperation. He was wondering if this would prohibit entering into this kind of arrangement and maybe prohibit endowment of lands funds from being invested in that kind of venture or were there other ways this legislation could affect this kind of arrangement.

**Representative Burgoyne** said he did not think this bill affects IGEMS, but he wanted to point out that his concern with the government entering the private marketplace has to do with the endowments. He said the government was in the marketplace when it comes to county hospitals. He said his concern was practicality. He said he completely supported IGEMS and he did not see a conflict between the bill. However, an IGEM activity being located on endowment land, he thought that would be permissible, as long as it is not an activity undertaken by the landlord in its capacity as the trustee of these endowments.

**Senator Tippetts** asked if the state wanted to enter into a business partnership arrangement with the private sector and they wanted to locate the business on endowment lands, did **Representative Burgoyne** believe that this bill would allow that to happen when the state is partial owner of that business? **Representative Burgoyne** answered that a landlord could not enter into that business relationship, but a university could. If that business relationship approached the landlord and the Department of Lands, either leased land or leased an improvement on that land, as any third party could, such as a grocery store, then they could do that in that capacity. He said he did not see anything in this bill to prohibit that because a landlord would not be a party to the business relationship, it would be a landlord.

**TESTIMONY:** No one testified in **support** of this bill.

The following people testified in **opposition** to this bill: **Laurie Bocickel**, Idaho PTA Legislative Vice President. She expressed a great concern related to what the impact of this bill will have on beneficiaries based on the management of the endowment lands. She said the Idaho PTA encourages Idaho state officials to take all necessary steps to manage the school trust lands and the school endowment funds in accordance with the trust duties and principles, including undivided loyalty to beneficiaries and a duty to make trust property productive in the long term as well as the short term. She cited the Statement of Purpose and said she could not help but ignore the fact that this all seems to be tied to the latest investment. The high return does not seem in the best interest of the beneficiaries.

**TESTIMONY:** **Robert Forrey**, from southwest Ada County and representing the Tax Accountability Committee, said he thought the Idaho Legislature was overstepping their bounds. A copy of all of his testimony is attached to the minutes.

**Senator Stegner**, University of Idaho President, said he opposed the bill and requested it be held in Committee. He said the bill restricts the ability of the landlord from considering and investing in diverse investment options that would result in a conflict of the constitutional responsibility and maximize the return for beneficiaries. He said he was prepared to talk about the University of Idaho's potential impact if this bill were to be enacted, but due to time constraints, he said he would yield to questions and other presenters.

**Vice Chairman Bair** said he would like **Senator Stegner** to delve into the dairy research issue. **Senator Stegner** said the University of Idaho was interested in having a world-class dairy research operation in southwestern Idaho. At one point, the state of Idaho was going to make some contribution into that effort, but that money was needed and pulled back and the whole project has been on hold for some time. Because of the confusing language in this particular bill and because of the restrictions it appears to put in place for businesses, they have concerns in: 1) whether or not they would be able to make land exchanges that would be the basic plan for acquiring the land for this facility; and 2) they are concerned that the language would be so restrictive and so limiting that the University of Idaho as the lessor or the owner of endowment lands, may be restricted from entering into non-agricultural, which is not defined very well in the bill. Some of the operations would be essential for making that operation successful.

**Senator Stegner** said that if there was a research dairy herd, dairy cows would have to be milked at some point. Then the product would have to be disposed of, entering into just not agriculture, but Ag business, limiting the effect. The University might want to engage in additional research and commercial interests. It is a major concern and has been expressed by the administration. We think it is very cumbersome language that is very uncertain for some of the things they may want to undertake.

**Chairman Pearce** said that if they were to amend the bill to clarify that they could do a dairy research project, would the University feel like they could support the bill. **Senator Stegner** said he was doubtful they would be able to do that with the waning days of this legislature. He said it might have an effect on some other aspect of the University of Idaho research, such as medicine, high tech, development of an electrical engineering apparatus, it could be in forestry or in any number of things they may want to be engaged in for the next 120 years. They find this, at least for the moment, to be restrictive. He said, however, maybe they could find an agreeable language over the course of some discussion or negotiations, potentially they could, but not in the matter of days this legislature runs, he felt was problematic.

**Senator Stennett** asked **Senator Stegner** that what he is doing in terms of this would be the business of the University and really all he is doing is a partnership to operate off the Department of Lands. She said she was trying to clarify where those divisions are made, where it is that it is the ownership of the University, as opposed to the Department of Lands ownership. They are just providing that you could be an operator on their property and that you are in charge of that whole venture that you are talking about with the dairies. **Senator Stegner** said he was not sure if he knew the answer and he directed her to page 7 of the Attorney General's opinion where they address this very specific area of this bill. They say the intent of the meaning of the proposed revision is difficult to discern in plain language. He quoted page 7, the second paragraph, "the phrase except where the land is used by a public entity for a public purpose defies easy interpretation." He said the focus on the Attorney General's opinion is the vagueness of some of the specific language and he does not think it is as clear. He said he thought the Idaho courts will likely find this bill unconstitutional and that is the primary focus.



**TESTIMONY:**

**Todd Hatfield**, from McCall representing himself as a small business owner, said he thought the bill was over the phrase of long term financial return. He said the bill puts a maximum limit on how the maximum return has to be obtained. He read a few excerpts from the proper role of government quoted by Governor Otter. He said he was opposed to socialism either in whole or in part. He indicated the University of Idaho is conducting economic development workshops, along with the Idaho Council of Governments (SAGE) and the Department of Commerce, trying to solve our high unemployment rate in our economy. He said this bill will kill the economy and private industry by having the state compete with private businesses.

**Chairman Pearce** said this item and the other items on the agenda would be continued to Wednesday, March 14, 2012 at 1:30 p.m. as they were out of time.

**ADJOURNMENT:** **Chairman Pearce** adjourned the meeting at 2:57 p.m.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

**AMENDED #1 AGENDA**  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
**1:30 P.M.**  
**Room WW55**  
**Wednesday, March 14, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<b>APPROVAL OF MINUTES</b>	Minutes of March 2, 2012	Senator Werk
<a href="#"><u>H 495</u></a>	Continuation of Hearing Relating to State Endowment Lands	Representative John Vander Woude
<a href="#"><u>H 494</u></a>	Continuation of Hearing Relating to the Idaho Board of Scaling Practices	Representative Scott Bedke
<a href="#"><u>H 496</u></a>	Continuation of Hearing Relating to Exemption of Members of Armed Forces, Reserves, National Guard by Fish & Game, and Veterans from Hunter Education Requirements	Representative Lynn M. Luker
<a href="#"><u>H 608</u></a>	Relating to Water Rights	Ken Harward, Association of Idaho Cities

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce	Sen Heider
Vice Chairman Bair	Sen Tippets
Sen Cameron	Sen Werk
Sen Siddoway	Sen Stennett
Sen Brackett	

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, March 14, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALLED TO ORDER:** **Chairman Pearce** called the meeting to order at 1:32 p.m. He directed the secretary to take a silent roll call.

**APPROVAL OF MINUTES:** **Senator Brackett** made a motion, **seconded** by **Vice Chairman Bair**, to approve the minutes of March 5, 2012. The motion **passed** by a **voice vote**.  
**Senator Siddoway** made a motion, **seconded** by **Vice Chairman Bair**, to approve the minutes of March 7, 2012. The motion **passed** by a **voice vote**.  
**Senator Werk** made a motion, **seconded** by **Senator Tippetts**, to approve the minutes of March 2, 2012. The motion **passed** by **voice vote**.

**H 495:** Continuation of Hearing Relating to State Endowment Lands.

**TESTIMONY:** **Rachel Gilbert**, Tax Accountability Committee, testified in support of H 495. She cited the prior testimony of **Representative Burgoyne** and urged the Committee to pass the bill. A copy of her testimony is attached.

**TESTIMONY:** The following people testified and asked the bill H 495 **be held in Committee**. **Robin Nettinga**, Executive Director of the Idaho Education Association, expressed two concerns: 1) The bill would significantly shorten the time lines for the Land Board to make decisions regarding the acquisition and disposal of lands in the best interest of the beneficiaries; and 2) This bill limits the landlord's ability to diversify investments and maximize returns through the acquisition of business entities. She said at the same time, other sections of government would continue to operate businesses that could be construed as competing with the private sector.

**TESTIMONY:** **Karen Echeverria**, Executive Director of the Idaho School Boards' Association, said she was there to present ISBA's opposition to H 495; and **Rich Garber**, Director of Industry and Government Relations for the cause of agriculture and life sciences at the University of Idaho, who spoke about a proposal to create a livestock and research center in southern Idaho. He spoke about the impact H 495 may have on the ability to move forward with the facility.

**Senator Tippetts** asked **Mr. Garber** if he could give the Committee a little more information about the language in the bill that gave him concerns. **Senator Tippetts** referred to page 2 of the bill, Section 58-104A, number 1 and asked if the language having to do with "provided however, that except where the state endowment lands is used by a public entity for a public purpose" not give the comfort level that WAS needed and if not, why? **Mr. Garber** said the intent was not to impede the development of the research facility, but the legal counsel felt the statement was not definitive and if the 501C3 was to operate the business as a business, then they were in competition with private enterprise. He stated he didn't think the impact was clear.

**Chairman Pearce** said he would ask a similar question of **Mr. Garber**. If the Committee would fix the wording so he was comfortable and would specify **Mr. Garber** would like to develop a dairy, did he feel this was good legislation? **Mr. Garber** said if there was a fix, they would welcome and support that, but at this point, he didn't know if the fix would be in this current piece of legislation.

**TESTIMONY:** **Erik Makrush**, Idaho Freedom Foundation, testified and asked the bill H 495 be sent to the amending order .

**TESTIMONY:** **Tom Schultz**, Director, Department of Lands, said he found himself in a difficult position, on a different side of the issue with the **Chairman**. He said he appreciated the opportunity to speak before the Committee. A copy of talking points for his testimony is attached to the minutes. He said the Land Board took action on this bill and voted 3:1 to oppose the bill. **Mr. Schultz** said he was there representing the majority of the Land Board. The opposition felt very passionate about this bill and he understood their concerns. He said this had been bantered back-and-forth for the last 18 months. He said there was a discussion as to who had the decision-making authority over some of the issues. Is it the role of the legislature or is it the role of the landlord? The landlord has expressed concerns. Specifically, they were concerned about the fact that this infringed upon their authority and impinged on their constitutional rights. This was one of the key arguments of this bill. He said the role of the legislature was to provide some structure, some rules within which to operate. The decision-making of the Board on business decisions that fall in the realm of the landlord, and he said he understood members of the Committee and others disagreeing with the decision made by the Board. **Mr. Schultz** questioned how this would be any different than any decision that would be made with a spouse or anything else. He stated when one disagreed with someone, how did one respond and what dialogue would they enter into and he said he realized this was an avenue to go. He said the Board had tried to pursue the issue and there had been a lot of mention made about the Asset Management Plan. He said there was actual language put in the Asset Management Plan that specifically addressed the concerns.

**Mr. Schultz** talked about the infringement upon authority and he felt that was what had the Board mostly concerned. He responded to some of the comments made over the last couple of days. He said the staff indicated they had no ulterior motive. They were trying to carry out their constitutional responsibilities by getting the maximum return for the beneficiaries over the long term. He said the return on the investment had outpaced anything they have done. He talked about the Land Bank Fund and gave a brief history of the time line. He said the Department felt that six months was not sufficient enough time to turn around transactions. He said the six month requirement would force poor decisions and make unintended consequences. He said if they had more time, they could make better decisions in the marketplace and be more transparent.

He addressed the comment about the Endowment Trust losing money on commercial investments. He said during fiscal year 2010 to 2011, they invested over \$5 million in their commercial assets in terms of renovating those buildings, bringing them up to code. That was money the Department of Lands had to get appropriated from the legislature. The returns had been 1.3% over the last couple of years overall from all of their commercial buildings. Going forward, he said, in fiscal year 2013, they were anticipating a 6% to 8% return from their commercial portfolio. There are costs in doing business and part of owning commercial real estate is to invest in those assets insuring their long-term viability.

Another issue came up about how they account for their costs. Per state law, the Department of Lands has to do a cash-on-cash basis in terms of how they account. **Mr. Schultz** stated that in fiscal year 2012, they were going to look at accrual based accounting, just as a comparison.

**Mr. Schultz** talked about risky investments and the fact that the state was liable if they perform poorly. He said the constitution was pretty clear in Article IX, Section 3, that the Public School Permanent Endowment Fund of the state shall remain forever inviolate and intact. The permanent fund grew from land sales on the royalties generated from minerals that were developed over time. Most of the earnings from the permanent fund were fed back to the permanent fund and these funds were guaranteed based against loss.

**Mr. Schultz** addressed the comment that had been made about their expertise in managing commercial properties, in particular, self-storage units. He said he made it clear they don't directly run the businesses. They pay for professional services to manage their commercial assets.

He indicated another issue had to do with taxes. On average, taxes foregone for the 2.6 million acres that the state owns and manages was between \$5 to \$7 million and if it was sold tomorrow and put back into the private sector, that would be how much tax would be generated. He said they generated profits, by having those lands in state ownership and employing people. Direct contributions of about \$46 to \$50 million a year net of expenses were being directly put into the school system. In addition to that, there were indirect benefits of jobs, such as, equipment that was purchased to manage the lands and gasoline. There were about \$133 million on an annual basis, between direct and indirect benefits, that were generated from the management of state trust lands, compared to \$5 to \$7 million statewide annually, using average numbers that would be put back on the tax rolls. From a very gross scale, the management of these lands, under the current management scheme, is far in excess of the property taxes that would be generated using average tax numbers.

**Mr. Schultz** said another comment that was made was about decisions of investments made for the Endowment Fund investments or past investing in emphasizing diversity and looking at what were the FID returns over a ten-year period. The Endowment Fund, over the last ten years, made a 5.9% return with their benchmark being 4.6%. The average returns averaged from 2% and 4% in a given year. On the commercial side, he said, looking forward, they were looking at 6% to 8%. He enumerated the various properties and different classes of land and said they have different terms. He said the Committee needed to keep in mind the volatility of the stock market. The notion that putting money in the permanent fund was risk-free was not necessarily correct. He said timber was their primary revenue-generator. There are always issues with being openly-dependent on the timber base. He said the commercial portfolio was less than 1% of the total assets. He said he felt they were not at high risk for commercial and that it would actually help over the long-term to reduce their risk from being overly-dependent on timber returns.

**Mr. Schultz** said a lot of questions were raised about the authority of the landlord to let his land and what constitutes land. He cited the Supreme Court case in 1935 in Reynard vs. the City of Caldwell, and the term "land" was actually defined in the case. Land includes all physical things on the earth, such as buildings, fixtures and any state or interest in lands including easements. The question was whether or not the Land Board had the authority to manage land. That had not been in dispute and one would have to define and interpret what that means and the court, in 1935, did that.

**Senator Siddoway** asked **Mr. Schultz** if he understood on page 2, 58-104A, Section 1, line 24 where it said that "provided, however, that except where the state endowment land is used by a public entity for a public purpose". **Senator Siddoway** said he took it to mean that if one were talking about a school or perhaps even a research center, that would allow an out. **Mr. Schultz** said that looking at the history and evolution of this bill in the earlier draft, it initially talked about having to sell, not sell or lease, all of the improvements and that was an adjustment made between H 188 and this version of the bill. Part of the reason was that state entities, like the Department of Lands, actually rents from the trust's beneficiaries an office building. So, his understanding was initially that was an attempt to get the sponsors to address issues where public buildings were owned by the beneficiaries that were then leased to the Department of Lands.

**Senator Siddoway** spoke about the same section of the bill where "all non-agricultural improvements on said land shall be leased or sold to private person" and his question really lies within this sentence. If there was a building like the one **Mr. Schultz** mentioned and this forces that to either be sold or leased, if that is so, then he thought the next sentence on line 29, "that it shall be sold to private persons", then did that set the state up with lands, with buildings that are owned by other entities or other people and the land is owned by the state, did that set us up again with the cottage site situation just like Payette Lake?

**Mr. Schultz** said the best way to get the maximum return was to own the improvements and the bare land. The state could own a building and the bare land based on the wording in the bill. The disposition of the structure was not forced, but it forced the disposition of the business entity and he thought that was the way it was portrayed by the sponsors.

**Senator Tippetts** said that when he saw the Asset Management Plan he was surprised and he thought it was a pretty aggressive plan for getting into and expanding in the commercial market. He felt it had been represented to the Committee today that the state was looking to get involved in hotels, restaurants, shopping malls, and so forth, which he was not entirely comfortable with. He said it appeared there had been an increased sensitivity on the Land Board to these kinds of businesses being owned by the state because a concern had been expressed to purchase storage buildings. He asked **Mr. Schultz** whether or not there was an increased sensitivity to getting those kinds of businesses and did the state have intentions to own hotels, restaurants, shopping malls and or to operate those kinds of businesses?

**Mr. Schultz** referred to his prior testimony regarding how the entities would be managed and he said they would not be managed with state employees. They would be third parties, professionals and the state would contract with to carry out those operations. He also said there had not been anything that had been plucked out saying they were going to go buy a hotel. The process was such that they didn't go tell people what to buy for them, rather, they brought the Department of Lands potential transactions. He said they were not out there in the marketplace pointing to all of these different things. However, for example, the state did have a ski hill on endowment lands. There was a recognition that some of these things do exist. The state had not made any ventures into owning or acquiring a hotel or any of those things. There was a list of things for consideration and there was a study done as to how the state could diversify.

**TESTIMONY:**

**Lynn E. Thomas**, Attorney, said he was not there to advocate one way or the other for the bill. He said he was hired with another attorney, **Mr. Dave Leroy**, to do an independent, outside legal analysis of the bill from the perspective of whether or not the legislature had the authority that was set in constitutional power to enact legislation. In the process, they received an opinion from the Attorney General and opinions and analyses were opinions or predictions about what the courts might do with a particular piece of legislation, given all of the varying circumstances, such as the language, the legislative history and the constitutional background. They used a different approach as to whether this was a valid piece of legislation. He said the Attorney General's opinion appeared to be based on pieces of language taken from factually different circumstances. He said they seemed to reason from the bottom up, namely, focusing on the premise that the Board had very broad discretionary authority. On the other hand, **Mr. Leroy** and he had begun the constitutional language and have reasoned down from there. The important piece of language that appeared in the Constitution spoke of the duties of the Board which were to be exercised subject to such regulations as may be prescribed by law, as may be prescribed by legislation. The legislature, in all of the cases they examined, the Board's power as they saw it, emanated from the legislative authority and the regulations prescribed by law. One thing that was seen in all of the cases is continuous judicial deference to legislative enactments and this is one of the strongest principles in interpretation. **Mr. Thomas** said the legislature has the power to make policy judgements and the judiciary defers to those judgements in every case where it is not plain.

When the business manager was being described on the plans, essentially one was dealing with a subordinate authority. Who is the Board of Directors? The Board of Lands is the business manager and it is the state legislature and that seems to be the sense of these opinions. The duties of the board are to be exercised subject to such regulations as prescribed by law. According to **Mr. Thomas**, the conclusion, as a result of these things, was that the legislature has legal authority to enact.

**TESTIMONY:**

**John L. Runpt**, Attorney in Boise, volunteered to assist the Taxpayer's Accountability Committee. He reaffirmed **Mr. Thomas's** exposition on the constitutionality of the bill and said he agreed and came to the same conclusions. He discussed the diversity of the investment brought up by **Senator Heider**. Diversity of investments is prudent. He said the Land Board, in the handling of the land and the Permanent Endowment Fund, the principle of the prudent investment standard must at least be followed. He said there were cases that also talked about this trust being a sacred trust and there must be an unconditional guarantee. He suggested to the Committee that the prudent investment standard was a commercial standard and this standard for handling these funds, that is the Endowment Funds on one hand and the Lands on the other, is an inviolate trust.

The idea of professional management could be handled by the professional managers in New York. The landlord has the capacity to direct the investment facilities in New York. If they felt there should be a push to give more attention to commercial development, they could instruct the New York managers to do just that, to invest more in commercial real estate. He asked the Committee why they had to beef up the Department of Lands in Idaho to replicate this investment function. **Mr. Runpt** stated it was a very sophisticated process with appraisers, actuarial experts, investment people so why would we want to duplicate this investment function here beyond what the Department of Lands does very well in the timber area. He suggested to the Committee that the limitations to this bill could foster that direction and to prevent the Land Board from exercising the idea of going into commercial investments and directing and owning businesses. He said he felt it was a terrible direction to go.

**Mr. Runpt** pointed out that in the Heartland Study in Seattle, sponsored by the Department of Lands, there was a recommendation to get rid of the auction process.

He summarized, stating that the bill did not prohibit land exchanges, investing in commercial real estate, owning any land or the improvements. It only prohibited operating businesses and that was one of the objectives of the bill.

**Mr. Runpt** said he wanted to add one more thing about agriculture and whether agriculture covered timber and he said, yes, the intent of the drafters was that the use of the word "agriculture" did cover the timber business.

**Senator Heider** said to **Mr. Runpt** that knowing our land values have dropped that have been held for investment, how does one square that with the mandate to maximize the return on our investment. There seems as though there is a contradiction. How are we going to maximize that if all we own is bare land or land for timber or agricultural uses.

**Mr. Runpt** said it was to maximize long-term financial returns and it was the long term issue that fostered the language by the Supreme Court. Land values have gone down, but so did the market in New York and it is a constant variable type of investment portfolio that has to be established with some diversity to take care of those ups and downs. Comments have been made, such as, why don't we sell all of the public lands and he said he did not feel comfortable with that idea. The land is always going to be there and there is the investment portfolio on the other hand. The landlord can direct the New York managers to favor certain investments. He suggested that is where the diversity needed to be and would be proper.

**Senator Heider** said that **Mr. Runpt** was suggesting the state does not have the ability to invest in enterprises in Idaho and that we should turn our money over to a New York investor to manage it better than the state can and was that his intention.

**Mr. Runpt** said he was not suggesting the lack of ability as much as he would the requirements that it would take to develop the facility in the Land Department to do it competently to build a true investment.



**TESTIMONY:**

**Jason Hancock**, from the Superintendent of Public Instruction office, said he was asked to testify about the reason **Superintendent Luna** wouldn't have voted against the motion to oppose three bills, although the large part of his reason for voting against that motion was for his support of bill H 495. He said he agreed with some of the things **Mr. Schultz** said about the commercial property and the cash accounting versus accrual accounting and was part of the reason that appeared to be a low return in that area. Both **Superintendent Luna** and he fully support the activities of the Department of Lands staff. He said they were doing a good job for the endowments. He said the reason for **Superintendent Luna's** opposition to that motion that supported this bill was really philosophical and simply that the government should not be in the role of actively running or have a profit interest in the operation of businesses. He said their only consideration in looking at what kind of assets they should own in the endowments was how much money they could make and there was no limit as to what they might take on. He gave an example of owning a McDonald's, a meat packing plant, or a law office. He said maybe we should sell all of our lands because the return was less than what one could get in the market over a long period of time. When we own a storage business, that puts the state in the position of having a profit or loss and a vested interest in who wins or loses in that particular business sector. We want the storage business to win because it accrues to our benefit if they do. This bill would not actually require the board to sell even their storage property. We would, however, have to at least lease out the whole business so we would no longer have a profit interest and whether or not this particular business was successful. We see this bill as being fairly modest in scope and he thought we could own any kind of land asset under this legislation, but we could not own the business that operates it.

**TESTIMONY:**

**Representative Vander Woude** did a summary. He said commercial and residential was to diversify in the right markets. The first point, he said, was that the diversity argument was not constitutional nor were they practicing diversity by trying to get rid of residential lots. The second point was the University said they could not have their research dairy or their facility they want to build there. He believed that argument was bogus and he said the bill said for public entity for a public purpose and the University was a public entity and the research dairy was for the public purpose and he said he thought this was definitely excluded from this bill.

The rate of return from the Permanent Endowment Fund over the same 10 year period was 5.83%. He pointed out that the \$2.7 million was turned into the Permanent Endowment Fund at the same time they bought the storage units. He said that the Permanent Endowment Fund made 15.8% one year and 24.6% the next year, so that was a lot more income than the 6% or 7% that they were talking about. He said he was baffled that the School Board and the Parent-Teacher's Association said they didn't want to hinder where the return was. Everyone heard that the Permanent Endowment Fund lost a considerable amount of money prior to those years, but so did the commercial. But, he said, look at the same time frame and look at the same numbers. If that money would have been invested there, we would have had a substantially better return than what we have now.

**Representative Vander Woude** said he did not want the Permanent Endowment Fund or the Endowment Fund to get rid of their land. The purchase of land, to him, was what classified it as a long-term perspective on investments and the long-term return, if one keeps it in land. This bill is philosophical as to what is the proper role of government and what is the proper role of the legislature. He said it was the proper role of the legislature to give some guidance to the Land Board on how they invest the money and he also thought it was the proper role of government to stay out of the private sector competing with businesses. He said he wanted to yield his time to the co-sponsor, **Representative Burgoyne**.

**TESTIMONY:** **Representative Burgoyne** said he would articulate the choices for the Committee. He said he was very confident that: 1) the bill is constitutional; and 2) in technical terms, it does what we say we want it to do. The issue then falls to the Committee to decide if the policy choice that has been presented is the policy choice they choose to make. He said he didn't think there was a technical or a constitutional issue. He said we want the endowments to be healthy and to provide a permanent long-term benefit to the beneficiaries which are school children and others of this state benefit. The policy choice is not complicated and he could understand others have different views about that policy choice.

**Representative Burgoyne** said that when it comes to a question about affordable storage, it is not where the investment is, it is the nature of the investment. He said that land that was sold and rather than putting it back into just lands, some of that money went into a tangible asset. He queried, do we want to sell off land and use some of the money from that land to buy blue sky? He said for him, the answer was no, that was too risky. He said even if a professional manager was hired, what was our expertise to do that. He said he thought these types of investments were best made through a broad portfolio with many different kinds of businesses, stocks, bonds and other investments. Money from land, that in his opinion, should have gone back into land, went for blue sky. Let us get that blue sky through that passive, diversified endowment fund investment, which he views as sacred and would probably provide a greater return.

**Chairman Pearce** said to the Committee that the H 495 bill was before them. There was **no response**. He reminded the Committee there were only three minutes left. **Chairman Pearce** said he guessed the bill would be held in Committee as there was **no motion**.

**ADJOURNMENT:** **Chairman Pearce** adjourned the meeting at 2:56 p.m.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:00 P.M.  
Room WW55  
Friday, March 16, 2012

	DESCRIPTION	PRESENTER
<b>APPROVAL OF MINUTES</b>	February 20 and March 12, 2012	Senator Brackett Senator Tippets
<a href="#"><u>H495</u></a>	Discussion	
<a href="#"><u>H 494</u></a>	Continuation of Hearing Relating to the Idaho Board of Scaling Practices	Representative Scott Bedke
<a href="#"><u>H 496</u></a>	Continuation of Hearing Relating to Exemption of Members of Armed Forces, Reserves, National Guard by Fish and Game, and Veterans from Hunter Education Requirements	Representative Lynn M. Luker
<a href="#"><u>H 608</u></a>	Continuation of Hearing Relating to Water Rights	Ken Harward, Association of Idaho Cities

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce	Sen Heider
Vice Chairman Bair	Sen Tippets
Sen Cameron	Sen Werk
Sen Siddoway	Sen Stennett
Sen Brackett	

COMMITTEE SECRETARY

Linda Kambeitz  
Room: WW37  
Phone: (208) 332-1323  
email: sres@senate.idaho.gov

MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Friday, March 16, 2012

**TIME:** 1:00 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Heider, Tippetts, and Stennett

**ABSENT/ EXCUSED:** **Senators Werk and Brackett.**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:05 p.m.

**H 494:** Continuation of Hearing Relating to the Idaho Board of Scaling Practices. **Tom Schultz**, Director, Department of Lands, presented this bill to the Committee.

**Mr. Schultz** said this bill would amend membership requirements of the Idaho Board of Scaling Practices and would create one new Board member position. He said current statute provisions require two Board members be appointed by the Governor from nominees provided by Intermountain Forest Association (IFA). He further stated that due to the dissolution of the IFA in Idaho, amendments to the statute addressing Scaling Board membership were necessary. The proposed amendments set requirements for gubernatorial appointments intended to reflect balanced representation on the Scaling Board with equal opportunity for nominations from a broad spectrum of the timber community. **Mr. Schultz** said the bill contained an emergency clause to provide for gubernatorial appointments on a current IFA member term expiration as well as a new member appointment, before the Scaling Board budget and assessment-setting meeting conducted prior to the start of fiscal year 2013.

**Mr. Schultz** said the Scaling Board did vote on this bill at a board meeting in support of this bill. A copy of his talking points is attached to the minutes.

There was no one who wanted to testify.

**MOTION:** **Senator Siddoway** made a motion, **seconded** by **Senator Heider**, to send H 494 to the floor with a "**do pass**". The motion **carried** by a **voice vote**. **Senator Siddoway** will carry this bill on the floor.

**H 608:** Continuation of Hearing Relating to Water Rights. **Chris Meyer**, Attorney with Givens-Pursley and representing the City of McCall, presented this bill on behalf of **Representative Stevenson** and **Ken Harward**, Association of Idaho Cities. **Mr. Meyer** said the purpose of this legislation was to clarify that a separate water right was not required for the collection, treatment storage or disposal storage, including land application, of the effluent from publicly owned treatment works. He said effluent was water that had already been diverted under an existing right and had not been returned to the waters of the state. **Mr. Meyer** further pointed out, that if the land application was to be on land which was not already identified as a place of use for an existing water right, notice of the place of use would be provided to the Department of Water Resources. This would allow the Department

to have complete records of where the water was to be used. He said this bill resolved this question.

**Mr. Meyer** passed out two letters in support of H 608. One letter was from the Association of Idaho Cities and the other one was from the City of McCall, copies of which are attached to the minutes. He said the City of McCall faced a zero phosphorous limit at Lake Cascade. As a consequence, putting that water back onto the lake, no matter how well treated, was a physical and financial impossibility. He indicated he was not aware of a city or sewer district that had ever obtained a water right in connection with such land application or other disposal place. He had received assurances that obtaining an additional water right would not be a requirement from the Department of Water Resources. Based on his own research, to the extent the municipality land applied water that was traceable to its own municipal water right, that municipality didn't need to do anything further and that it was covered by that initial water right.

**Mr. Meyer** said, in many instances, though, the cities "land apply" water that came from sources that were other than its own municipal water right, which raised a question. For example, the City of McCall accepts sewage water from outside the city limits, collected by a sewer district. This is a cooperative venture that makes a lot of sense economically and environmentally when it applies that water altogether. They are not the only ones who face this question. He cited the City of Boise as another example. The water doesn't come from its own municipal water rights because it doesn't own any. He said there were probably others. The purpose of this legislation, he said, was to get the water lawyers out of this business and to allow municipalities to spend their dollars and focus their attention on the issue at hand, which was the water quality side of the equation. The Department of Water Resources was involved in drafting this legislation and added some provisions to it, notably, a provision requiring notification of the Department of Water Resources when there is a land application and the payment of a small fee to cover their administrative costs.

**MOTION:** **Senator Heider** made a motion, **seconded** by **Senator Bair**, to send H 608 to the floor with a "**do pass**" recommendation. The motion **carried** by a voice vote. **Senator Heider** will carry this bill on the floor.

**APPROVAL OF MINUTES:** **Senator Heider** made a motion, **seconded** by **Senator Siddoway**, to approve the minutes of February 20, 2012. The motion **carried** by a **voice vote**.  
**Senator Tippetts** made a motion, **seconded** by **Senator Heider**, to approve the minutes of March 12, 2012. The motion **carried** by a **voice vote**.

**DISCUSSION OF H 495:** Relating to State Endowment Lands. Chairman **Pearce** said the testimony had been heard and the hearing was closed.

**MOTION:**

**Vice Chairman Bair** moved, **seconded** by **Senator Siddoway**, to hold H 495 in Committee. **Senator Tippetts** said he felt bad that those who were interested in this legislation one way or the other the other day, were wondering why the Committee didn't take any action, so he wanted to explain his opinion. He opposed the legislation for a number of reasons and he said he was concerned about the six-month time period as being too short. He said he felt there were some constitutional problems with the legislation and he said he respected the opinion of **Lynn Thomas** and that of **David Leroy**. He said based on our Attorney General's opinion, he was a little nervous about moving ahead. He said he was not comfortable with the aggressive plans that were outlined in the Asset Management Plan and he said he appreciated being made aware of what was happening with the investment management. He suspected there was a much greater sensitivity on that Board and he expected they would change their course. He apologized to those who had to come back today because of the Committee's inaction the other day and he said he hoped everyone understood why they undertook the action they did. He said that with that explanation, he would be supporting the motion.

**Senator Cameron** said he struggled with the bill for many of the same reasons **Senator Tippetts** spoke about. He said there were duelling opinions and it reached beyond the constitutional authority of the Committee. He said he supported the new director of the Land Board in making appropriate decisions and trying to garner the most amount of money possible for the beneficiary, which was critical. He commended the two sponsors of the bill for tackling this situation because he believed the government should not be in competition with the private sector and there was a fine line. He said he felt this bill crossed the line a little bit too far the other direction and he thought the Department had heard the message and he said he thought they would be a little more cautious in their approach. He said he thought the goals of the bill had already been accomplished. **Senator Cameron** said he, too, stood in opposition to the bill. He said that in his "neck of the woods", they would love to have the dairy research facility back up and running and back on track and anything that would impinge upon that would be short-sighted on the part of the Committee. He said he apologized for the Committee not making a motion because he thought that effectively killed the bill. **Senator Cameron** said that apparently they needed to vote and stand and be counted and for that reason he opposed the bill.

**Chairman Pearce** asked the secretary to do a **roll call vote**.

**ROLL CALL  
VOTE:**

The following voted **aye** : **Senator Stennett, Senator Cameron, Senator Tippetts, Senator Heider, Senator Siddoway**, and **Vice Chairman Bair**. The following voted **nay**: **Chairman Pearce**. The following Senators were absent: **Senator Brackett** and **Senator Werk**. The motion **passed**.

**H 496:**

Continuation of Hearing Relating to Exempting Members of Armed Forces, Reserves, National Guard by Fish and Game, and Veterans from Hunter Education Requirements. **Representative Lynn Luker**, gave a presentation on this bill. This bill would exempt members of the military and veterans from the requirements of taking a hunter's education course before obtaining a hunting license. He gave a brief history of the hunting laws. In the prior years, hunter education courses were required for those who were born after January 1, 1975. There has been a whole generation that have passed since that time through the military and he didn't know if that was a subject of thought at the time. He said now we have soldiers who have been through the military and they were required to take a hunter's education course in order to get a hunting license here in Idaho. Through doing some research, **Representative Luker** found out there were four states who didn't require hunter's education unless one was under 18. He said he was surprised to find one of the states was Oregon and the other states were Arizona, New Mexico and South Dakota. He said Alabama already had a military exemption, so this was

not anything new. The thought was, he said, there was a time when laws needed to be reviewed as necessary. He said we needed to ask ourselves if we needed to have this extra burden upon those who had already gone through military training.

**Senator Heider** thanked **Representative Luker** for presenting this bill and said he had a couple of questions. He said he realized that a person in the military may know how to field-strip a rifle, clean it and handle it well. Even though they learn how to handle the weapon very well, probably better than most hunters, he asked if soldiers trained in the military were taught to look at the target or what was beyond or if it was a safe place to shoot or those types of things.

**Representative Luker** said there were some military personnel who served in Iraq who testified at the House hearing. Because this bill has been a moving target, they did testify very clearly and said those were basic skills for anyone who goes through the military. They said one had to distinguish who they were shooting at and know what they were shooting at. He said the military personnel had to learn more than just how to handle a weapon.

**Representative Luker** gave an example of his 16-year old daughter who went through a hunter ed course when she was 11. She had been hunting a couple of times and he asked her what she remembered about her hunter ed class. She said what she remembered the most was the field training, but as far as the book stuff went, she couldn't remember. If she didn't ever go hunting again until she is 30 or 40, she has a ticket for life, even though she went through the training when she was 11. He said it seemed as though the men in the military were getting a whole lot more than what his daughter, who went through hunter's education four or five years ago.

**TESTIMONY:**

**Bill Landon** of the Idaho Conservation Officer's Association, said his association opposed this bill. A copy of the letter in opposition from the Idaho Conservation Officer's Association is attached to the minutes. He said they have great respect for military personnel. He said they have concerns and that today's hunter's education was a lot more comprehensive. He said they go over wildlife laws, wildlife identification, hunting techniques and rural manners. The rural manners included closing fences, asking permission of ranchers and farmers before hunting on private lands, not shooting near livestock, hunter image, etc. **Mr. Landon** referred to page 67 of "Today's Hunter of Idaho" magazine, published by the Idaho Fish and Game. A copy of the magazine is kept on file with the minutes. The magazine has an article about hunter ethics. He said the issue was not the military personnel, but the issue was the other parts of the course. He said the military personnel they were trying to help could be in conflict with the land owners. They don't like to investigate military personnel, but they do. He indicated they have hunter education classes on line that can be completed while they are employed. He asked for a no vote on this bill. He indicated the live fire course has been waived by the Fish and Game for the military.

**TESTIMONY:**

**Jay Stark**, Idaho Hunter Education instructor, asked for a no vote on this bill. A copy of his letter is attached to the minutes.

**TESTIMONY:**

**Sharon Kiefer**, Deputy Director of the Idaho Department of Fish and Game, testified on hunter education requirements. A copy of her testimony is attached to the minutes. She gave a brief history and said national hunting accident rates had plummeted since the initiation of hunter education. She said that about ten states currently exempted military personnel from the requirement of hunter education, with most only exempting active duty personnel and several only exempting resident military personnel or those stationed in their state. **Ms. Kiefer** said H 496 would exempt all active and veteran military personnel from the requirement of hunter education certification for hunting license purchase. She said it would apply to both resident and nonresident military personnel younger than the current age exemption. She indicated the Fish and Game recognized the significant training

and accomplishment of active and veteran military servicemen and women, yet it was evident that much of what was learned with hunter education was not specifically covered in military service or training. **Ms. Kiefer** said the Commission did not support this bill.

**Senator Tippetts** asked if a non-military person or non-resident lived in another state, what would be the requirements for them? **Ms. Kiefer** said if they had a valid hunting license in a state where there was a reciprocal hunter education requirement, then that would be accepted in lieu of an actual hunter education certificate. If there was no agreement, then they would have to get a hunter education certification, either through their state or our state, to purchase a hunting license. Or, if they were over the age limitation, which, starting on April 1 would be 39 or older, then they would be exempt from the hunter education certification.

**Senator Tippetts** said that if a military person that resides in another state that exempts military personnel and that person comes to Idaho, would that person be required to take the Idaho hunter education course? **Ms. Kiefer** said her understanding was they would have to take the course. **Senator Tippetts** said he was not sure he understood what was being said in the last answer, so he asked if a person was required to have it in their state, would we have a reciprocal agreement potentially with that state or not? **Ms. Kiefer** said no, they would still need hunter education certification if that was not a requirement in their state.

**Senator Heider** asked **Ms. Kiefer** if they already had a license in their state, which meant that they were qualified to hunt in their state and they applied to come into our state, then would they be able to hunt in our state? **Ms. Kiefer** said she would follow up immediately on that, but it was her understanding that the license was reciprocal and that the license also carried a hunter education certification requirement.

**Chairman Pearce** asked **Ms. Kiefer** how much time would a military person who didn't want to go through the rifle shooting part of the training, how much time would the hunter safety course take them. **Ms. Kiefer** said the on-line work, particularly for an adult, probably would not take more than three hours. She said the field course, without the live fire, would take around three hours. **Chairman Pearce** asked how much time did a regular course take? **Ms. Kiefer** said a traditional course would take about eight hours of classroom time and there was generally about a half day of live fire exercise, and then the field course that took about three hours.

**TESTIMONY:**

**Ron Galloway**, Hunter Education instructor, testified saying the Idaho age requirement for licensing has dropped to the age of nine. He pointed out that military members had nine years to take a class prior to joining the military. He said the problem with H 496 was the fact that a nine year old takes a hunter education class and if he or she went hunting with a military member, they did not know what the youth had learned and was not in a position to emphasize the important learning points. He said he felt hunter education certification should not be waived. A copy of his testimony is attached to the minutes.



**TESTIMONY:**

**Rhett Moore**, representing the Idaho Hunter Education Association. A copy of his testimony is attached to the minutes. He gave an overview of his background, which he felt made him have a rounded perspective. He said the military firearms safety and training was only a small portion of what was taught in the Idaho Hunter Education Program. He said that military firearms' training was usually far more extensive than what was provided by hunter education. However, military personnel were not trained in the areas of firearm handling and training for hunting specific situations, such as fence crossing, hunter ethics, landowner interaction and public perception, and other situations encountered in the field. **Mr. Moore** summarized and said the IHEA fully recognized the many sacrifices made by the armed service members and they make every effort to support them. However, it is the opinion of the IHEA that H 496 does not support our military, but instead provides a disservice to them by setting them up for accidents or mistakes that could have been prevented with proper training. He said IHEA strongly opposed this legislation and asked the Committee to support the military by voting against this legislation.

**Representative Luker** summarized and commented on the testimony. He pointed out there was not a fishing safety class nor did he have to take a class to distinguish between a dolly varden and a bird trap. He didn't have to take a class to tell him if he had to fish with a barbless hook or only have a two-fish limit. He pointed out that if his daughter wanted to hunt in California or if he wanted to hunt in California, he would have to read their regs to figure out what was going on and he said that was what we were doing here. He said he didn't feel this was a disservice to the younger children. He said he was exempt, but he made sure his daughter and his sons went to hunter ed. Reciprocity, he said, was recognized in ten states and he realized this was an Idaho bill, but if someone wanted to go to another state and they didn't have their ticket, they would have to have it. There were some states out there that don't require hunter ed if one was over 18. He said he thought this was a good bill.

**Senator Tippetts** asked for clarification of the course for the military. He indicated his understanding was they could take the course on-line and that it only took about three hours. Since part of the field training was waived, did they still have to attend some sort of a field training session, but not shoot, or was that completely waived?

**Representative Luker** said there was the classroom, which could be three hours on-line or eight hours if one went through the whole course and then attended part of the field day (about three hours).

**Senator Tippetts** said that as he looked at the table of contents of the training program, it looked to him that it was not terribly onerous for a three or four hour course and he asked what was the tremendous imposition on the military?

**Representative Luker** gave an example of a Vietnam vet who brought this to him and he had a son who was an Iraq veteran. A friend of the son came to visit and he was also an Iraq vet and they decided to go hunting. They found out they could not go hunting because the vet did not have a license.

**Senator Siddoway** said he almost brought this bill two years ago and he started to look into it and he came to the conclusion that it was not overly burdensome and he wanted to bring it forward for the same reason **Representative Luker** did. He decided to back away from it for the reasons that were presented and it was not all that hard to get it done if one allowed lead time. He said if he was wrong, the motion would soon tell. But he sensed there was not support for the bill. He said he would propose to hold the bill in Committee.

**MOTION:**

**Senator Siddoway** moved, **seconded** by **Senator Stennett**, to hold H 496 in Committee.

**Chairman Pearce** asked how many states around Idaho required hunter education? Oregon, Washington, Montana, Wyoming, Nevada, and do we know any more of those? **Representative Luker** said there was a comparison chart for all of the states, but he didn't bring it with him to the meeting. However, he said the states that did not require hunter education were Oregon, South Dakota, New Mexico, and Arizona for those under the age of 18. He pointed out that Alabama and some other states had a military exemption.

**Senator Heider** said he hunted in many states and countries and every time he went he spent more time preparing than he spent actually hunting. Sometimes he felt it restrictive and other times he did not, depending on the laws and rules of that area. He said he didn't think it was out-of-line for Idaho to make sure that people who came to Idaho to hunt were qualified and prepared and knew how to hunt and do it safely. He felt it was incumbent upon the Committee to follow the guidelines of the Fish and Game Department to make sure people who come to Idaho were prepared.

**VOTE:** **Chairman Pearce** asked all who were in favor of the motion to hold H 496 in Committee to say **aye**. The motion **passed** by a voice vote.

**ADJOURNMENT:** **Chairman Pearce** adjourned the meeting at 2:09 p.m.

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Senator Pearce  
Chairman

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Linda Kambeitz  
Secretary

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:30 P.M.  
Room WW55  
Monday, March 19, 2012

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">H 542</a>	Relating to Taking of Wildlife	Representative Judy Boyle

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

Linda Kambeitz  
Room: WW37  
Phone: (208) 332-1323  
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MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Monday, March 19, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:30 P.M. He announced that the meeting needed to be concluded by 2 P.M. to allow the Education Committee to meet, due to the Legislature reconvening at 3 P.M. Wednesday's meeting (3/21) will begin at 1 P.M.

He then asked **Representative Boyle** to present H 542aa.

**H 542AA:** **Representative Boyle** said this bill is regarding ATV legislation which has been contentious since 2002. This past year, an ATV Task Force was formed of which she and Senator Bair were named co-chairmen.

She provided handouts to the Committee consisting of Travel Planning 101; Common Questions and Answers to H 542aa; and an opinion from the Attorney General's Office, which she referred to during her presentation and all are attached.

The Task Force met in August and September, 2011. At the conclusion of their meetings, they asked the Attorney General's Office to provide an opinion regarding a statutory basis for the Commission motorized vehicle rule for hunters. A response was received on October 11, 2011 that stated their opinion found the motorized vehicle use restrictions rule has undergone legislative review on multiple occasions and while that is not a definitive determination that the rule is authorized by statute, it serves as an advisory opinion that the rule conforms with legislative intent.

**Representative Boyle** said the issue she has is that the motorized vehicle rule for hunters is not tied to a statute, and as a legislator, she feels all rules need to be backed by statutes.

She stated that in 2002 when the Idaho Department of Fish and Game (IDFG) promulgated this rule, there was a lot of ATV cross-country travel on both BLM and Forest Service land. Then in 2005, the Chief of the Forest Service stopped the cross-country travel and issued a nationwide Travel Management Rule of USFS roads, trails and areas by type of vehicle, and if appropriate, by time of year. In Idaho, the travel planning process and subsequent USFS decisions have closed 70% of the 18,000 trail miles on USFS land. The IDFG rule affects 2,100 miles of the remaining 5,900 miles deemed "open" by the USFS.

**Senator Werk** said that having been on the Task Force, his impression was that the restriction of the use of ATVs is the means for the IDFG to manage game populations. He asked **Representative Boyle** how it might impact other aspects of management by taking this tool away? She replied that there is not a statute that allows them that rule, plus the rule has so many exceptions in it that it really isn't a management tool. **Senator Werk** then questioned the wording being stricken from H 542aa, Section 36-1101, sub section 1, line 21. He feels it provides them with authority. **Representative Boyle** responded by referring to the AG's letter, page 5, paragraph 2 that covers Idaho Code § 36-1101, that makes it perfectly clear that an ATV is not a weapon. **Senator Werk** feels that the passage of this bill will result in unintended consequences. **Representative Boyle** said that "the removal of this rule will not change anything out there on the ground, biologically, that isn't happening right now."

**Senator Cameron** stated that after visiting with some constituents, Commissioners, and other folks, that some are saying that the Department and the Commission heard the concerns of this Committee last year, heard the concerns of the Interim Committee, and made adjustments in their procedures and policy. Also, that this bill is not needed, because of those adjustments and we need to let that play out. He asked **Representative Boyle** to respond to his remarks. She said that "the compromise was to place a moratorium on that, and the rule is not tied to statute, and it is very, very confusing for both hunters and recreationists. It is only prolonging the confusion."

**Senator Cameron** then indicated that the argument that resonates a little bit with him from the performance of this bill is that by not allowing the Department to have the ability to regulate off-road use, then the Department's reaction would be to lower the number of tags available to the hunting public, and to change from an open season to a draw season in order to protect the number of animals taken in a season. **Representative Boyle** said that Fish and Game had an opportunity with Travel Planning to say what roads and trails that they want to close. There is no off-trail use anymore. They can additionally ask for other closures with the Forest Service. **Senator Cameron** then asked Representative Boyle if she believed with the passage of this act that it will force the Department to change hunting opportunities for hunters. **Representative Boyle** said no, she did not.

**TESTIMONY:**

**Ms. Sharon Kiefer, Deputy Director, IDFG**, testified in opposition to this bill. She provided a copy of her testimony, along with a map of hunt units with motor vehicle restrictions, and a copy of a letter to Director Nancy Merrill, Idaho Department of Parks and Recreation and Director Virgil Moore, Idaho Department of Fish and Game from Ernest Lombard, Board Chairman, IDPR and Tony McDermott, Chairman, Idaho Fish and Game Commission outlining the areas where the two agencies can work together to develop solutions and policies that will benefit all the citizens of Idaho. All documents are attached.

To summarize Ms. Kiefer's testimony, following is the last paragraph of her presentation: "Allowing de facto management of wildlife and hunting via federal travel plans that are not specific to majority hunter preferences may be OK with some and is certainly facilitated by House Bill 542aa. The Commission disagrees with this policy approach and does not support this bill. They believe the course of policy should be fulfilling their commitments to gathering input about rule revision and rule evaluation prior to any further Commission or legislative decision about the proper role of motorized vehicle restrictions for hunting."

**Senator Cameron** said that he was torn with this issue and he needed Ms. Kiefer to walk him through the current position of IDFG with regard to regulating ATVs. His understanding is that ATVs will be treated as any other vehicle on established roadways and asked if that was correct. **Ms. Kiefer's** response was yes, that ATVs are treated the same as any vehicle on established roadways that support full-size vehicles. He then asked if he was on his ATV with a gun, on an established roadway, and saw a deer on the ridge, that he could stop, get off the ATV, take his weapon and legally hunt the deer (provided he had the proper tag and license). Ms. Kiefer said that on an established roadway, it was legal. But if it was a trail, a single track trail that could only support a motorcycle or bicycle, then it would not be allowable under the rule. **Senator Cameron** then inquired about a "previously traveled roadway" for vehicles, but currently is not a traveled roadway due to overgrowth and/or erosion and asked how that would be treated. **Ms. Kiefer** said that a road that has essentially been abandoned and is no longer designated in any way for a full-size vehicle would not fall within the current context of the rule.

**Senator Siddoway** asked Ms. Kiefer if there are hunting units in the state that currently have access denied by the department and would this bill, in her opinion, open those lands or would they remain under the same stipulations that the landowner held? **Ms. Kiefer** said the landowner is the decision-maker and with or without this bill, the department can, for hunters, overlay on top of that landowner. What this bill cannot do is to take away the baseline decision of that landowner for motorized use. For example, if the Forest Service has a trail that is closed to motorized use, and if this bill passes, that does not change.

**Senator Siddoway** asked Ms. Kiefer to name an instance (if this bill passes) that will open up access that isn't currently opened now. **Ms. Kiefer** replied that she prefaced that by saying access specifically for motorized hunters. Those who are motorized recreationists are not affected one way or the other. In these units that do have motorized restricted hunts, if this bill passes, that motorized restriction would go away, and there may be new types of other restrictions. He then asked what kind of "other restrictions" would most likely be? **Ms. Kiefer** said the staff and Commission would need to go through and review each of those hunts on a hunt-by-hunt basis to determine what the proper tools would be. This is about limiting access and harvest vulnerability, so they will be using other types of tools that would limit hunting access, whether it is weaponry, number of days of hunting, etc., or the type of animal you could hunt.

**LETTER:**

A letter from **Fish & Game Commissioner Randy Budge** was given to the Committee members stating that the Commission made a good faith effort and agreement with IDPR and fully kept their end of the bargain by:

1. putting a moratorium on the expansion of the rule;
2. reviewing and rewriting the rule with their input to provide simplicity and clarify;
3. proceeding to evaluate and document the biological effectiveness of the rule; and
4. passing the new IDFG policy mandating that before land management decision making agencies IDFG cannot take any position for or against and must only evaluate the impacts on wildlife and their habitat and if they are negative provide direction on how they can be mitigated.

**TESTIMONY:**

Written testimony was submitted by the **Idaho Conservation Officer's Association** in opposition to H 542aa.

**TESTIMONY:**

Written testimony was submitted by the **Idaho State ATV Association, Inc.** in support of H 542aa.

**ADJOURN:**      **Chairman Pearce** adjourned the meeting at 2 P.M. and reminded the Committee that Wednesday's meeting will begin at 1:00 P.M. and discussion of H 542aa will be continued.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:00 P.M.  
Room WW55  
Wednesday, March 21, 2012

SUBJECT	DESCRIPTION	PRESENTER
<b>NOTE TIME CHANGE!!</b>		
<a href="#">H 542a</a>	Continuation of discussion Motorized vehicles/hunting from	Rep. Judy Boyle
<a href="#">H 458</a>	F&G, wolf tags, licenses	Sharon Kiefer, Deputy Director, IDFG

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce	Sen Heider
Vice Chairman Bair	Sen Tippetts
Sen Cameron	Sen Werk
Sen Siddoway	Sen Stennett
Sen Brackett	

COMMITTEE SECRETARY

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MINUTES  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**DATE:** Wednesday, March 21, 2012

**TIME:** 1:00 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:00 P.M.

**H 542AA:** The **Chairman** said that public testimony would be taken on **H 542aa**, starting with the people who had signed up at Monday's meeting and did not have an opportunity to testify due to time constraints.

**TESTIMONY:** **Mr. Haden Claiborne, Past President and current Board Member of the Boise ATV Trail Riders Association**, was the first to testify. He said there are approximately 125 members of that group and they are also members of the Idaho State ATV Association, with 2,500 members statewide.

**Mr. Claiborne** said the primary reason for the club is to educate the members as to how they should act when out on the trails and roads. Training is for youth and adults on the proper use of ATVs, safety measures, and environmental factors and promoting ATV etiquette.

Over the last three years, 60-70% of the trails have been lost and that is one reason **Mr. Claiborne** is concerned. He referred to the ATV Travel Plan Map, which he later gave to the Chairman, explaining how important it is for their members to acquaint themselves with the trails available for riding. **Mr. Claiborne** feels the federal government is taking away more trails, while the public is buying more ATVs and that makes for more congestion. For the past five years, he has been working with the federal government to help resolve some of the problems.

He asked for the Committee's support in passing H 542aa.

**TESTIMONY:** **Director Virgil Moore, Idaho Department of Fish and Game**, spoke next. He indicated that Ms. Sharon Kiefer had explained the Department's technical comments at a previous meeting. He feels the issue here is about hunter allocation. The decision, relative to this bill today, is: "Should the Commission be able to continue with this authority to regulate hunters who are using motorized vehicles off public roads?"

This issue was before this Committee last year, then it was before the Interim Committee. He feels the Department and Commission have been honest to the process that came out of the Interim Committee and the moratorium on implementing any additional motorized hunting rule restrictions on hunters was implemented. The policy on commenting on travel plans, on all kinds of federal activities, was amended by the Commission and they can no longer take a pro or con stance. **Director Moore** said that they made a commitment to the ATV community (to the hunters that use ATVs) to review, for modification, the motorized hunting rule because there are some confusing aspects of that. They want to give hunters an opportunity to request or seek modification of those motorized hunting rules for the issues that they have concerns with.

**Director Moore** feels that the issue of travel planning is a separate piece and is something that they work on separately to provide comments on. They are moving forward and are about half completed with the plans for the 10 million acres in southern Idaho.

**Senator Tippetts** said that he appreciates the efforts of the Department to reach some middle ground. The Senator agrees with the Director that it is a hunter allocation issue, but is concerned about the difficulty of enforcing it, as well as the interpretation of the rule. His primary concern is that if there is a need to reduce hunting pressure in a given area, this seems to be an inappropriate way to do it because of who is eliminated (older, but not disabled). **Director Moore** replied that the hunter population is aging and the use of aids to hunting is a continuing subject for the Commission to deal with.

**Senator Brackett** read from an email that he had received regarding ATVs driving across 8 million acres of BLM land that does not have travel plans and asked the Director to comment. **Director Moore** said that in looking at BLM's travel plans on the website, they have 11.2 million acres in the state, with 1.2 million acres in north Idaho and 10 million acres south of the Salmon River. As near as the Director could tell, they have in the process for designated travel plans, about 4.1 million acres of the 10 million acres. This overlays in the areas where there have been closures. He stated that they haven't overlayed their units onto BLM's travel plan to see how many of the units have the motorized current restrictions fall into areas that do or don't have travel plans. As to the 8 million acres, they probably refer to the plans that are in process, but not completed. **Senator Brackett** inquired if there are restrictions going cross-country on BLM land. The **Director** replied that BLM lands are open to cross-county travel until the travel management plans are implemented, unless there is a special closure. **Senator Brackett** inquired if Forest Service lands were different. **Director Moore** said that it is different and that the Forest Service is nearing the completion of the travel planning process for southern Idaho with designated routes; however, northern Idaho is still in the process of travel planning, but is outside of the effect of this motorized hunting rule.

**Senator Siddoway** asked for clarification of when hunters might be in violation, regarding hunters "going hunting" and hunters "going to set up or remove a campsite." **Director Moore** said that clarification of the rule is needed. When they are transporting equipment to a campsite, they are not in violation. When out driving on a public road and you spot game, after stopping and getting out of the right-away, you can shoot. On a trail in an area that has a motorized hunting rule, you cannot get off the ATV and shoot. That is the distinction between the two.

**Senator Siddoway** then asked if H 542aa passes and there are no restrictions other than what is already in place, what will be the biological effects and will some units have shortened seasons? **Director Moore** said there would have to be adjustments. One area is the Diamond Zone that is heavily used by elk hunters. The motorized hunting rule was implemented there to reduce vulnerability to elk by hunters to forestall the need for controlled hunt. Without that, there could be a controlled hunt and shortening of the season. Most of the mortality in that zone is man-caused, not predator issues.

**TESTIMONY:** **Mr. Craig Mickelson** indicated that he is here on his own personal time, representing the **Idaho Conservation Officer's Association** (game wardens). He does not represent IDFG. He said the Association strongly opposes H 542aa as it would impede the role of IDFG to manage game populations. By regulating hunters who use OHV's, IDFG can best regulate the game harvest. This bill would reduce the ability of conservation officers to properly manage and protect wildlife. The current Idaho Fish & Game motorized vehicle rule does not affect nor restrict non-hunting Off Highway Vehicle users.

The adverse affects of this bill:

1. Would prohibit IDFG from restricting the use of motorized vehicles as hunting tools.
2. Undo limitations on the Conservation Officers ability to manage OHV hunters on federal and state lands.
3. Will increase conflicts between traditional hunters (by foot or horseback) and hunters using OHVs (motorcycles, ATVs, UTVs).
4. Will lead to increased big game harvest.
5. Will lead to more controlled hunts (limited draw).
6. Will lead to less income in smaller communities that rely on big game hunting dollars.

**TESTIMONY:** **Mr. David Claiborne, President of the Idaho State ATV Association**, stated that H 542aa has been well-covered. He feels the issue is whether hunters should be allowed to travel on right-of-ways designated as open by the owner of land. He also feels IDFG does not have the authority to trump landowner decisions. Mr. Claiborne said that IDFG is not a travel manager, but a wildlife manager. He is in support of this legislation.

**TESTIMONY:** **Mr. Herbert Pollard** testified on his own behalf. A copy of his testimony is attached; however, to summarize his testimony, he said this is the wrong time and the wrong legislation, and probably the wrong reason to forward this bill. He recommended that H 542aa be held in Committee this session and that the sponsors be asked to look at the overall issue and come back with a comprehensive approach at some future date.

**TESTIMONY:** **Mr. Benjamin Davenport**, representing the **Idaho Outfitters and Guides Association (IOGA)**, said they are aware that this issue has become even more polarized since last session. They had hoped that the two agencies would be able to work together to address the concerns with the motorized hunting rule as the Interim Committee had suggested. IOGA has a number of hunt outfitters who operate in management units with the non-motorized rule, and also have outfitters who utilize ORVs in their operations according to the existing rule.

**Mr. Davenport** said it appears there is a certain amount of misunderstanding of the rule. It seems appropriate to address the rule as IDFG has committed and to give time for the Interim Committee's recommendations to take effect. Their concern is that elimination and/or severe modification of the existing rule will undoubtedly lead to loss of opportunity and more controlled hunts for guided and self-guided hunters. Guided and self-guided hunters have already endured vast amounts of lost opportunity since wolf reintroduction. He urged elected leaders to allow the IDFG to continue to keep its existing motorized rule in place.

**TESTIMONY:** Next to testify was **Senator Corder**. He thanked Representative Boyle for trying to come up with some solutions and he concurs with what she has written and said.

He said that one thing is for certain and that is things will continue to change. One of the most compelling arguments when he got into the debate was that hunters with ATVs were the problem – driving the game back. In his area, those people are in the minority. It is the non-hunters with ATVs causing the problem.

**Senator Corder** told the Committee that he didn't think they wanted to be in the business of managing game, so they authorize IDFG to do that. By allowing an agency to use a rule to manage the game, is not right. He stated that if the rule had not been accepted, then IDFG would have been forced to manage the game with all the other tools they have. He feels the Legislature should set the parameters for the agencies, then tell the agencies to go do their job. The Senator also feels that the management of game cannot be the same statewide, so he questioned why a rule should apply to the state as a whole.

His position is that it is an equity issue and you can't treat these two classes of riders differently, no matter what the stated purpose is. As a legislature, he feels they should not have accepted the fact that an agency is allowed to write a rule of which there is no statutory authority. The Senator said that if IDFG is allowed to do it, then he is going to require the same latitude for Health and Welfare, the Department of Agriculture, and other agencies.

**TESTIMONY:** **Mr. John Caywood, representing the Ada County Fish and Game League**, said that IDFG has plenty to do without looking for extra work involving ATVs. He wants to let the Department do what they need to do.

**WRAP-UP:** **Representative Boyle** thanked the Committee for spending two days on the bill. She said that she went to the Idaho Department of Parks and Recreation and asked them specifically about BLM land – even if there is not a travel plan in place. She was told one is still limited to the existing routes statewide, no cross-country travel, unless specifically named places like the Sand Dunes. **Representative Boyle** said the reason this rule is so contentious is because the public isn't certain what roads are open or closed and the bottom line is that there is no statute authorizing the IDFG to do this. As for closing hunting units or going to controlled hunts, if the game population is that fragile, then that is what the Fish and Game should be doing.

**MOTION:** **Senator Tippetts** made the **motion** to send H 542aa to the floor with a do pass recommendation. The motion was **seconded** by **Senator Brackett**. **Senator Stennett** asked for a **roll call** vote.

**DISCUSSION:** **Senator Tippetts** said that he appreciated the efforts made by the Department in the interim and they made a good-faith effort to reach a solution. He served on the Interim Committee and said he wasn't very optimistic, wondering if they could find "middle-ground." The Senator said the Committee worked hard to find a solution, but there didn't seem to be one to be found on this issue. One concern of his is how they will be allocating the hunters that have an area and who will be cut out of the process. Another concern of Senator Tippetts is the enforcement of the rule. He asked "How do you know when someone is travelling with a gun, whether they are hunting or not?" He is sympathetic to the position that the conservation officers are put in and the conflict that is being created with the public. Based on those issues, the Senator said there was a need to do something different and that is why he is supporting the bill.

**Senator Cameron** said that he is really struggling with this bill and that he agrees with almost everything that Senator Tippetts said. On one hand, he feels there needs to be some level of Fish and Game involvement and on the other hand, the rules that are in place are hard to work with, hard for the public to understand, and hard to be enforced. The Senator said that, in his opinion, the correct public policy lies somewhere in between this bill and where we currently are. He doesn't feel the current language in the current rule and regulation is the correct public policy, but for Fish and Game to have no authority may not be the correct policy either. He said that he was hopeful that some of the other land-use folks would interject and enter into the debate, but he has not heard from any of them.

**Senator Siddoway** said that he opposes the bill and can appreciate the situation that it puts the Department in, as well as the campers, hunters, and ATV users in the state. He feels this bill has some biological ramifications. The Senator stated that the Commission could be left hanging as they might not have the opportunity to react to what will ultimately become a bill or no bill. He then suggested that the bill be held in committee and reconvene the Interim Committee. As for the Department, Senator Siddoway said that they have made a good faith effort and is willing to go further to work things out. With the ungulate numbers down, it is easy to say, restrict the seasons. He feels the opportunity to hunt should be left open, then restrict the access to those hunters. Machines make hunting available, but if the wildlife is over-harvested, then there is a need to restrict the use of those machines and Senator Siddoway said that he will be voting no.

**Vice Chairman Bair** said that he will be voting against this bill also. This bill was brought on the premise that it is not supported statutorily. He rejects the notion that the Department does not have statutory authority to make rules, to make rules to regulate the method of take of animals. He read from the Attorney General's letter, dated October 11, 2011, the following: "In addition to the overarching grant of authority given the Commission in Idaho Code § 36-103(b) to administer state wildlife policies, the Commission is "authorized and empowered" to "administer the policy as declared in section 36-103" by, among other things, promulgating rules or proclamations establishing "when under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken." Idaho Code § 36-104(b)(2). The Commission may also adopt temporary rules imposing "such restrictions and conditions upon hunting, angling or trapping" as the Commission finds "necessary for the preservation, protection, or management of any wildlife of this state." Idaho Code § 36-104(b)(3).

"Generally speaking, the restriction of motorized vehicle use while engaged in hunting falls within the Commission's expansive authority to establish 'by what means...the wildlife of this state may be taken' ...." Idaho Code §§ 36-103, 36-104.

**Vice Chairman Bair** then said that he wanted to speak about the Interim Committee of which he was co-chairman. It was commissioned by the Pro Tem and the Speaker of the House and the Committee met twice, with some good things coming out. One of the issues was that the Department and Commission had overstepped their bounds in making recommendations for road closures with federal land agencies. In speaking with Commissioner Budge, they agreed that the policy needed to be changed. It has now been changed and when the plan is open for comment, IDFG will provide the cause and effect of the travel plan regarding wildlife. It will be up to the landowner to make that final decision on what road closures will remain. The Department has already adopted, as policy, a heading on letters or responses to a federal agency will be the following words: "The purpose of these comments is to assist in decision-making by providing technical information addressing potential effects on wildlife, and wildlife habitat, on how these adverse effects need to be litigated. It is not the purpose of Idaho Fish and Game to support or oppose this proposal."

**Vice Chairman Bair** stated that other good things came out during the meetings of the Interim Committee. The Department agreed to revisit the rule and they will begin that process shortly, so as to make the rule more clear and concise. They will also place a moratorium on road closures. If they should, in the future, find a necessity in an area to limit access, they have agreed to open roads in other areas in order to keep a "no net" increase in road closures. The Department has agreed with Parks and Rec (IDPR) that they will improve trail and road signs. The Department has agreed to study the effects of the motorized vehicle rule and will submit to both Resource Committees (Senate and House) a copy of their findings. The Vice Chairman said that lastly, they cannot ignore the biological effects that this will have on the wildlife herds. He then encouraged a "no" vote on the bill.

**Senator Brackett** said that last year there was a similar bill and he made the motion to hold that bill in committee. The reason he did was because at that time, it was his feeling there was some middle ground; however, that legislation did not find it. He feels the Interim Committee did not solve the issue this past year. The cross-country issue is an overstatement on the part of the BLM ground. Senator Brackett said H 542aa is not a perfect bill, but it will move the process forward. If there are problems, they can revisit the issues. He asked for support of this bill.

**Senator Heider** stated that he supports what Vice Chairman Bair and the Interim Committee have done. However, his constituents have asked for his support of the bill and he will be voting for it.

**NOTE:** Included in the attachments is a list of approximately 60 people who phoned and/or e-mailed the Senate Resources and Environment office opposing H 542aa.

**ROLL CALL VOTE:** A roll call vote had been requested. Voting **aye** were Chairman Pearce, Senators Cameron, Brackett, Heider, and Tippets. Voting **nay** were Vice Chairman Bair, Senators Siddoway, Werk, and Stennett. The **vote was 5-4**, with the majority voting in favor of the bill. **Senator Corder** will be the **sponsor**. **Senator Cameron** asked to be recorded that he **may or may not vote in favor** of the bill on the Senate floor.

**MINUTES:** **Senator Brackett** said that he had read the minutes of March 14, 2012 and made a **motion** that they be accepted as written. The motion was **seconded** by **Senator Tippets**. The motion **passed** by unanimous voice vote.

**MINUTES:** **Vice Chairman Bair** said that he had read the minutes of March 16, 2012 and made a **motion** that they be accepted as written. The motion was **seconded** by **Senator Siddoway**. The motion **passed** by unanimous voice vote.

**H 458:** **Ms. Sharon Kiefer, Deputy Director, IDFG**, presented H 458. She said this bill would add a wolf tag to the existing Sportsman's Pak license package (the Sportpak) including fee adjustment for the added tag. Tags in the Sportpak are priced at about 63% of full price if purchased separately. IDFG estimates revenue benefits to the Fish and Game fund of about \$50,000 assuming sales of the Sportpak do not change dramatically. A copy of her full testimony is attached.

**MOTION:** **Senator Siddoway** made a **motion** to send H 458 to the floor with a **do pass** recommendation. **Senator Cameron seconded** the motion. The motion **passed** by unanimous voice vote. **Senator Tippetts** will be the **sponsor**.

**ANNOUNCEMENT:** **Chairman Pearce** announced that there will not be a meeting on Friday, March 23, but there will be one on Monday, March 26 beginning at 1 P.M.

**ADJOURN:** The meeting was adjourned at 2:15 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary

AGENDA  
**SENATE RESOURCES & ENVIRONMENT COMMITTEE**  
1:00 P.M.  
Room WW55  
Monday, March 26, 2012

SUBJECT	DESCRIPTION	PRESENTER
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**NOTE TIME CHANGE!!**

[HJR 002](#)

A Joint Resolution to amend the Constitution of the State of Idaho to preserve the rights of the people of Idaho to hunt, fish, and trap.

Senator Heider

Page Recognition – Janae Godfrey

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Pearce  
Vice Chairman Bair  
Sen Cameron  
Sen Siddoway  
Sen Brackett

Sen Heider  
Sen Tippetts  
Sen Werk  
Sen Stennett

COMMITTEE SECRETARY

Juanita Budell  
Room: WW37  
Phone: (208) 332-1323  
email: [sres@senate.idaho.gov](mailto:sres@senate.idaho.gov)



MINUTES

## SENATE RESOURCES & ENVIRONMENT COMMITTEE

**DATE:** Monday, March 26, 2012

**TIME:** 1:00 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Brackett, Heider, Tippetts, Werk, and Stennett

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CALL TO ORDER:** **Chairman Pearce** called the meeting to order at 1:00 P.M. He asked Senator Heider to present HJR 002a.

**HJR 002A:** **Senator Heider** said HJR 002a is the House version of SJR 106 that was sent to them, which is the right to hunt, fish, and trap. He explained the changes that were made.

The National Rifle Association (NRA) wanted the words "including by the use of traditional methods" and "managed through the laws, rules and proclamations that preserve the future of hunting, fishing and trapping" added, which was done. The NRA originally had "managing and controlling wildlife", but the Idaho Department of Fish and Game (IDFG) had the NRA attorney in Washington remove the words "and controlling" and just leave "managing wildlife". The IDFG was much happier with that.

The last portion satisfied the Idaho Water Users and maintained private property rights. At the end, the words "and shall not prevent the suspension or revocation, pursuant to statute enacted by the legislature, of an individual's hunting, fishing or trapping license." **Senator Heider** said that what that means is if you break a law, the IDFG still has the right to suspend or revoke your license. Just because you have been given that right does not mean that it can't be taken away if you violate a privilege.

**Senator Heider** said that he feels like he started out with a good resolution and it has been worked through several times; however, when the NRA came to town, it had to be changed; looking at judicial review, some changes were needed. He said that with the changes, it gave more people an opportunity to evaluate it and say what they thought was important and these changes were necessary for those on the other side of the Rotunda to want to incorporate it into the Constitution of the State of Idaho.

The Senator said that he wanted to comment about the Attorney General's opinion which was requested by Senator Werk. With the AG's opinion, Senator Heider feels that the resolution will not be overturned if contested. He suggested to the Committee that HJR 002a be sent to the floor with "do pass" recommendation.

**MOTION:** **Vice Chairman Bair** made a **motion** to send HJR 002a to the floor with a "do pass" recommendation. The motion was **seconded** by **Senator Siddoway**. The **Chairman** stated that there was more testimony regarding this bill.

**TESTIMONY:** **Ms. Sharon Kiefer, Deputy Director, IDFG**, said that the Department recognizes the issues that were brought forward, and from a technical perspective, they are comfortable with it going to the people. A copy of her full testimony is attached.

**TESTIMONY:** Written testimony was submitted by **Pamela Williams**, Boise, asking the Committee to **not** proceed with this resolution. She feels that trapping is unnecessary, non-selective, and vicious in its infliction of suffering. She stated that there are other management tools available that deliver a swift and merciful death. Her testimony is attached.

**Senator Werk** said that he wanted to thank the House for helping us to save us from ourselves. He stated that the Attorney General's opinion makes it exceedingly clear that what's going to happen over the years is that anytime Fish and Game looks to move in a particular direction associated with traditional hunting methods, people will have the ability to use this constitutional amendment as the anchor for their next lawsuit to try to overrule what Fish and Game is trying to do. He told Senator Heider that he appreciated all the work that he has put into this bill and respects him for all his efforts, but he cannot support the bill.

**ROLL CALL VOTE:** **Chairman Pearce** said a roll call vote would be taken. Voting **aye** were Chairman Pearce, Vice Chairman Bair, Senators Siddoway, Heider, Tippetts, Cameron and Brackett. Voting **nay** were Senators Stennett and Werk. The motion **passed** 7-2. **Senator Heider** will be the floor **sponsor**.

**MOTION:** **Senator Siddoway** said that he had reviewed the minutes of March 19 and found them to be accurate and made the **motion** that they be approved. The motion was **seconded** by **Vice Chairman Bair**. The motion **passed** by unanimous voice vote.

**PAGE APPRECIATION:** **Chairman Pearce** asked the Committee's Page, Janae Godfrey, to come to the podium so that the Committee could honor her. Janae is from Soda Springs and has an older sister who served as a Senate Page. When asked about her experience here at the Capitol, Janae said that she learned a lot and now has an appreciation for government. (In fact, she likes it!) Her plan after graduation is to attend the LDS Business College and to work with her three sisters in their family business.

**Chairman Pearce** presented Janae with a letter of appreciation, signed by the Committee members, and a Senate watch. He wished her well in her future endeavors.

**ADJOURN:** The meeting was adjourned at 1:20 P.M.

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Senator Pearce  
Chairman

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Juanita Budell  
Secretary